

LABOUR LAW

Principles & Practice in Cameroon



Michael Akomaye Yanou

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Michael A. Yanou



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Foreword

It is always not very easy to catch up with the relentless pace of Labour Law. Indeed, I am very pleased to have been called upon to write the FOREWORD to this book. The bi-jural background under which the author undertakes this task, immediately paints a picture of very difficult academic tides. Not only has he examined the substantive principles of Labour Law in Cameroon but has also touched on the issue of procedural fairness. In these instances the author has maintained clarity and readability, making sure that there is an accurate updating of the material.

Law Reporting in Cameroon has always suffered a setback. And this notwithstanding, the author took the pains to provide the reader with several local precedents gathered from superior Courts of record from both the Common Law and Civil Law Jurisdictions in Cameroon. Small wonder that although the book is situated within a Common Law context, its strength lies in the authoritative discussions predicated on concepts and principles emanating from both jurisdictions. From the outset the author demonstrates his profound commitment to present Labour Law from an entirely indigenous perspective. It is for this reason that the first chapter of the book spells out a detail account of the historical evolution of employment Law in post-colonial Cameroon.

Among other topics the author equally examines the controversy which arises from wrongful dismissals. In this connection, the issue of remedies was thoroughly analysed. He makes an attempt to discuss how an employee, who has been wrongfully dismissed, could be reinstated. Unfortunately the author does not devote sufficient space in his book on Trade Union Law in Cameroon. Collective Labour Law is gaining ground, and this would have been an opportunity for the author to render a critical analysis of the legal foray lurking into the freedom of Trade Unions.

However, one notes with satisfaction that the author treats with unquestionable lucidity the procedure for commencing and managing

Labour matters in Cameroon. This is not surprising mindful of the fact that he could sap from his rich experience of legal practice in Cameroon and Nigeria. This book stands out as a big contribution to knowledge and I would quickly recommend it to legal Practitioners, Judges, Law Students, Law makers and Social Workers.

Ephraim N. Ngwafor
Professor of Law
University of Yaoundé II, SOA

Preface

Having read through the draft of this well researched and structured work, I think it is a response to the gaping need that has plagued legal practice in general and labour law in particular in Cameroon. There is a dearth of well researched books on important disciplines in law written by Cameroonians. This regrettable situation has invariably meant a reliance of substantive and practice books written mostly by Nigerian and English writers. While books written by these writers have been helpful, they have not always captured our own peculiarities and judicial attitudes. When approached from the perspective of practice in the Anglophone regions, it will be realized that not even Cameroonian writers of French orientation have in fact succeeded in doing so.

It goes without saying that foreign books based on foreign legislation and precedent cannot be expected to fully address the often difficult and complex issues which fall for determination in our local courts. There are fine distinctions between our law and foreign law in almost every facet of law in spite of the sometimes deceptive similarities that may be seen at first sight. These differences are a product of legislation, judicial history and the differences in the political superstructure of the country of which the foreign writer does not often take into account. It thus invariably means that such books have fundamental shortcomings in our context in Anglophone Cameroon.

The core of the work is based on principles derived from the labour code and indigenous case law expounding on the concepts in the code. It critically attempts to demonstrate the judicial attitude of the Cameroonian judge to the code. He shows that at the apex of the judicial ladder is the Supreme Court of Cameroon that gives uniform interpretation and common application of the labour code of Anglo-Saxon and Romano-Germanic origins. Case law has been carefully analysed and comparison with foreign law drawn where it was considered necessary to do so. In writing this book, The author has

endeavoured to raise awareness about issues of security of service (right of specific re-instatement) in Cameroon which has not received the attention it deserved particularly from our judges and lawyers.

On the whole, this book is a very insightful piece of scientific work that I recommend to all law students, law professors, lawyers, and judges, and all those interested in labour law.

Fonkwe Joseph Fongang
Supreme Court Judge
Republic of Cameroon

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Although a work of this nature can only be written with the support of many, it is to God that I owe my exclusive gratitude for writing this book. Apart from creating me with a destiny in academics and practice, it is thanks to the Lord's inspiration that this book has seen the light of day. I wish to express my gratitude to Dr Jonie Fonyam and other colleagues of the Department of law, University of Buea for their support and understanding. I must as well thank Justice A N Njie and M. Mbeng of the Court of Appeal, Buea, respectively, for making available to me their thought provoking decisions for use in the book.

I should also thank Justice J F Fonkwe of the Supreme Court, Yaoundé, for assisting me with the bulk of the Supreme Court cases cited in this book. My childhood friend Dr James Ewah, University of Calabar, friends and colleagues in practice Barristers Nicholas Fonkem of Kumba and Dada J and J Ukey of Calabar also offered encouragements towards the realisation of this book. My gratitude as well goes to Dr. Kenneth Nsor, Consul General for the Nigeria, Buea, as well as Miss Delphin Tita, Helen Njomo, Tony Tchana Yanou and Vincent Fossung of Yanou & Fossung Consults, Buea, for their contribution towards the success of the book. Finally, I wish to take this opportunity to applaud Mr. Julius Fonboh who did an excellent job of the technical aspects of the book.

The book is dedicated to my wife Mrs Nicholine Musi Yanou and our children Masters Michael Lobga Yanou, David Tchami Yanou & Dani Yanou.

Chapter 1

Contract of Employment: A Historical Perspective

Introduction

Paid employment in its present sophisticated form was simply non-existent in pre-colonial Cameroon. This absence of paid employment could be attributed to a variety of reasons only few of which are of interest in this book. For one, the existence of a labour relationship like paid employment presupposes the existence of an effective legal tender. It was in the context of pre-colonial Cameroon literally impossible to think of paid employment in the absence of an effective medium of exchange like money. Clearly, the non-availability of a legal tender was both here as elsewhere in pre-colonial Africa responsible for the absence of paid contract of service¹.

Besides, it is obvious that the predominant forms of occupation during this period in history (farming and hunting) could not support the existence of paid employment. Naturally, in this type of basic economy each family had to rely on its members for labour. There was, in the circumstances, no question of specialization that could have led to the creation of a pool from which workers may be recruited. In this situation, the practice was for the few African dignitaries who had need for large scale labour force to rely on their family members for it.²

This form of labour practice was possible because pre-colonial families which were extensive (wives, children, grandchildren, nephews etc.) could be easily adapted to provide services in the farms or the construction of homes. Indeed, unlike what obtains today, it was in fact not fashionable in pre-colonial times to sell one's labour since to do so was considered undignifying and beneath the status of

¹ J.Roper, *Labour Problems in West Africa* London Penguin 1958:12

² Ibid

a free born. The practice of working for others, where it existed at all, was limited to those at the lower strata of society such as slaves and the desperately poor.³

Pre-Colonial Labour Relationship

Commercial labour however did exist amongst traditional Cameroonian communities before the coming of Europeans in what later became known as Cameroon. Just as commercial labour varied according to the diverse character of indigenous communities, so was the form of employment relationship. The most prominent source of large-scale commercial labour was that provided by slaves. Slave labour was so important and widespread during this period that it had pointedly been noted that “without slaves the economy would have collapsed.”⁴

Ancient pre-colonial labour relationship differed from modern employment in many respects. Firstly, service was not voluntary. Secondly, apart from the petty privileges attached to the nature of their functions, slave workers were not paid by their masters. The relationship in slavery is devoid of consideration and so cannot strictly be described as employment as understood in modern employment law. The absence of these features makes the conclusion above compelling particularly as section 1(1) and 23(1) of Law No 92/007 of 14 / August, 1992 commonly referred to as the labour code defines employment in terms of voluntariness and pay.

The other important type of labour engagement during this period was the collective co-operation.⁵ Two forms of these were prominent and widespread. The first occurred when a person had more work than he and his family could handle and had to commission a party made up of his friends and relations to assist him to do the work. Apart from the provision of food for the working parties, he was not required to pay the workers. He was not obliged

³ E Anyandele *Historical Studies* Labour frank cass 1979:70

⁴ Ibid.

⁵ M.A Fadipe *The Sociology of the Yorubas* Ibadan University Press 1970:151

to pay the party outside providing food while they worked. Neither was he obliged to answer a similar call for members of this work party though social ethics demanded that he should be ready to reciprocate when invited by others.

The second form is that related to work done by a standing association for manual help. A member of the association was entitled to call upon his colleagues in the association to assist him carry out certain services. Here, the person helped necessarily had to reciprocate the gesture when his services were required by other members. Although these pre-colonial forms of labour engagement were not regulated by well-defined rules, they were however subject to certain discernible regulatory practices such as should be expected in simple societies. It can, therefore, be safely assumed that one who had received the assistance of the association was in breach of his obligation to other members of the group if he subsequently declined to respond to a call to work for them.⁶ Such a recalcitrant member may be ostracised from the community.

Introduction of English and French Labour Law

The law regulating the contract of employment in Cameroon is built upon a foundation of imported French and English law. The country's dependent status as a colony of France and Britain respectively made the importation of foreign law inevitable. The earliest enactment that received French labour law into the former East Cameroon was the French Overseas Labour Code of 1952. The reception of this law (Law No 52/1322 of 15th December, 1952) was however made without any specifications. It is assumed that what was received included both the express provisions of the 1952 law and French judicial culture and procedure which is largely pro-administration and anti-workers.

⁶ The practices which is still prevalent in rural communities in the country has evolved to the popular "two party" system of work common in coca and coffee farming.

In Cameroon west of the Mungo, the laws regulating labour matters were those received from Nigeria which was under British colonial rule. Nigerian Labour rules and regulations which got incorporated into the former West Cameroon were themselves based on English labour law for her overseas territory. English labour law was comparatively more liberal than the French Labour Law in Cameroon as it was a product of the common law which is essentially libertarian in orientation.

However, following independence and the subsequent merger of the two Cameroon's, the country enacted a "harmonised" labour code. This code (Law No. 67/LF/6 of 12th June 1967) became the exclusive legislation for the management of labour issues in the country. The 1967 code which is substantially French in character was subsequently revised in 1974 and 1992. It is apparent that in spite of these revisions, the present labour code Law No. 82/007 of 14th August 1992 remains essentially a product of the 1967 legislation.

Some of the patently obnoxious provisions in the labour code 1992 like sections 28(6), 29(4), 37(2) in the code giving the Minister of Labour powers to make what amounts to executive legislations covering a wide range of important areas can be traced to the 1967 legislation. These provisions must be situated within a civil law context of the supremacy of the executive arm of government which can be traced to the country's constitution.

In spite of what has been said here, it must be acknowledged that our law of employment sounds in contract. Although its nucleus is found in foreign law, the labour code remains an autonomous indigenous legislation. While foreign precedent may provide guidance in the interpretation of its provisions, there is in principle and practice no basis to rely on any previous abrogated colonial law in determining workers' rights. It was for this reason that the Supreme Court reversed a court of appeal decision which relied on the French overseas labour code in determining the case of the parties in *Society des Dragages V Nyamney Paul Loti*.⁷

⁷ Appeal No 70 of 17th May 1973.

Definition of a worker conceptual relevance

It may be thought that a study such as this is not worthwhile because it deals with the rather technical question of the definition of a worker. This view assumes that the concept of a worker is so common place that it ought not to be the subject of any critical discourse. The view is regrettably void of substance in the context of Cameroon for two reasons. Besides the fact that the concept of a worker is not amendable to a definition with scientific precision, the idea of a contract of service is clearly underpinned by the judicial specificities in the respective regions of the country.

Generally, the influence of foreign law on labour matters is common practice in both civil and common law jurisdictions in the former East and West Cameroon respectively. It has in the past sometimes been taken to such extremes in Labour matters that the Supreme Court has had to intervene to check the phenomenon. The Supreme Court had to intervene in *Dragages V Nyamney Paul Loti*⁸ to reverse a court of Appeal decision relying on the French overseas labour code which had incidentally been repealed in France. This case presents a graphic example of such unreasonable reliance on French law in labour actions by the lower courts in the former East Cameroon and explains why the present analysis is important.

Aside from the above tendency, it is imperative to also deal with this theoretical discourse on the nature of a contract of service in which the worker is involved since it is by so doing that the necessary distinction between the worker and an independent contractor can be demonstrated. This conceptual analysis is necessary for many reasons. Apart from the fact that the rights and duties of employers and workers vary according to the nature of employment, the analysis will facilitate the determination of the issue of whether a particular employment relationship has been properly terminated.

It is, in this regards, worth observing that the right to terminate a contract of employment is under the labour code subject to certain limitations which either party violates at his own peril. Thus, unlike

⁸ Appeal No 70 of 17th May 1973.

what obtains under the common law, an employer does not have the absolute liberty to terminate a worker's employment as the employer pleases. The employer cannot terminate the worker in disregard of the provisions of section 34(1) of the labour code. The section mandatorily requires that the termination of a contract of service be preceded by a notice in writing "given by the party taking the initiative of terminating the contract." Section 34(1) further provides that the notice under reference must specify the reasons for the termination of the contract of the worker.

Indeed, even under the common law, the distinction and categorisation of workers is vital for the obvious reasons that it helps to put certain issues of fair trial in their proper perspective. It is for instance certain that whether one has been fairly dismissed or not may in fact even under the common law turn on such categorisation⁹. The right to a fair hearing before dismissal is for instance not available to one who holds office at the pleasure of the crown

From a procedural perspective, a theoretical analysis leading to a better understanding of the worker/employer relationship with the capacity to distinguish it from analogous relationships is inevitable. The legal practitioner must be scrupulous in ensuring that an action relates to a dispute involving the worker/employer relationship cognisable as coming within the contemplation of labour law rules before accessing a labour court with it. The Supreme Court decision in *CNPS v Kuma Ndumbee*¹⁰ that the action of the Minister of Labour and Social Insurance annulling a labour report was an administrative act which should not have been taking to a labour court supports the argument in favour of a sound theoretical understanding of labour law issues.

Quite apart from the fatal consequence of a wrong appreciation of a case as demonstrated in the *Kuma Ndumbee* case above, a sound understanding of the theoretical nature of a contract of service leading to a proper categorization of the worker and independent

⁹ It was held in *Osakwe V Nigerian Paper Mill* (1998) SCN 722 that what determine the wrongfulness of the plaintiff's dismissal is the contract of service and not any notion of fair hearing.

¹⁰ Appeal No 97/5/02-03 of 5/8/1998.

contractor relationship is also necessary for purpose of academic clarity. For a particular relationship to come within the purview of labour law and thus be regulated by its principle, it must be shown that the relationship of master and servant which in our context relates to the employer/worker exists between the parties. The rules of access to the labour courts are based on the employer/worker relationship in the main

Who is a worker?

The labour code makes reference to the term “worker” a word which is in labour parlance used interchangeably with employee, servant, workman etc. The question “who is a worker” as asked above is thus similar to that of “who is a servant.” The difficulty in dealing with the latter has to do with the fact that the question has under the common law been asked for reasons sometimes completely unconnected with labour law.¹¹ Has this definitional difficulty been imported into the common law courts in Cameroon? This question is particularly significant in Cameroon where section 1 and 23 of the labour code has specifically defined a worker for the purpose of the application of labour law principles.

However, before dealing with the definition proper, it is for reasons of actual legal practice necessary to elaborate on an important ancillary point connected with the definition of a worker before proceeding further. This point relates to the question of whether the status of the worker is a question of fact as was stated by the English case of *Fergusson v. John Pawson Partners*¹² or a point of law. Dealing with this point is particularly important because of the peculiar nature of the burden of proof created under section 39(3) of the labour code.

Although this point has not to our knowledge been canvassed in Cameroon, it will appear certain that the common law courts in the former West Cameroon will be inclined to adopt the position taken

¹¹¹¹ Winfield & Jolowicz *The Law of Torts* London Sweet & Maxwell 1979: 552

¹² (1976) 3 ALL E. L.R 517

in Fergusson's case¹³. Thus conceived, a party in a labour action in the common law courts is obliged to lead evidence to establish his status as worker or employer and not leave the issue for addresses by counsel. Besides, by the implications of section 39(3) of the labour code and the interesting decision in Akamangwa Martin v SONARA,¹⁴ the worker is only bound to establish his status as a worker leaving the duty to prove the wrongfulness of a dismissal on the employer.

More importantly, this distinction is crucial for the purpose of appellate labour practice particularly at the Supreme Court. The need for this conceptual clarity lies in the fact that the bulk of labour appeals in the Supreme Court are dismissed on the basis of the infamous provision of Article 13(2) of Law No 75 /6/ of 8/12/1975 organizing the court which limits it to the determination of arguments on points of law only. Manga Amougou Luc v SODECOTON¹⁵ where the Supreme Court dismissed the appeal because it thought that the ground of appeal alleging a violation of the law was a pretext to cause it to examine the facts of the case in the lower court classically illustrates this view.

For an answer to the question who is a worker proper, we have to revert to sections 1(1) and 23 of the labour code which both proffered a definition of a worker.¹⁶ The former which has been reproduced for ease of analysis states thus:

In this law worker shall mean any person, irrespective of sex or nationality, who has undertaken to place his services in return for remuneration, under the direction and control of another person, whether an individual or a public or private corporation, considered as the employer.

Section 23(1) of the labour code further stresses the above element of control by relating employment to an agreement by which

¹³ See Akamangwa Martin v SONARA Suit No HCF/L.011/2000-2001

¹⁴ Ibid.

¹⁵ Appeal No 58/S/02-03 of 19/4/2002.

¹⁶ The situation in Cameroon is therefore different from that under English law where because of the fluidity involved in the motion of service there is as yet no precise definition of a servant.

a worker undertakes to put his services under the authority and management of an employer against remuneration. The question is: have these provisions introduced the common law control test as a basis of defining and distinguishing a contract of service involving a servant/worker from that for services of the independent contractor?

It is clear from a plain reading of the above provision and a review of the authorities that this is undoubtedly the case. The courts have (apparently without saying so) taken the view that the element of control as a test for the determination of a contract of service in which a worker is involved is applicable even under the legal regime regulating employments in the country.

Control as a basis for Determining a Contract of Employment

The Supreme Court in *Nanga Emile Honore v SCTA*¹⁷ held that the primary features of employment contracts are the subordination and control of the worker by the employer and the payment of remuneration to the worker. This decision is without doubt similar to that in the English case in *Yewens V Noakes*¹⁸ to the extent that both proceed on the premise that control is a critical test in ascertaining whether employment exists. The present conclusion is buttressed by the fact that the role of control in ascertaining the existence of employment under the Labour Code was further stressed when the Court of Appeal Bamenda (following principles articulated by the Supreme Court above) stated in *UNVDA Ndop v Ange Mando*¹⁹ affirmed that control and pay are important elements in the definition of a worker.

Control is from the above decisions a vital first fact which must be established by the plaintiff in every labour case at the pains of having the action dismissed. Yet, apart from affirming that control is a vital test in ascertaining the existence of employment, these decisions did not indicate the extent of control required for the

¹⁷ Arret No 48/S of 01/04/82.

¹⁸ See *Yewens v Noakes* (1890) 6 BD 553.

¹⁹ BCA/C./88 Unreported decision of the Bamenda Court of Appeal.

conclusion that the person engaged is a worker. The degree of control required for ascertaining the existence of employment was however indirectly dealt with in *Assurances Des Provinces Reunis v Tiogum David*²⁰.

Here, the same court of appeal division in Bamenda indicated that what is required is supervisory management of the worker backed with the power to discipline for non-compliance. Based on this reasoning, Justice Jani in the case under reference regarded the employer's instructions telling the worker where to work and how to handle funds as sufficient elements of control for employment to exist. It is revealing that a stipulation in the contract that the "non-respect of its disposition shall result in the termination of the agreement" was interpreted in the decision as a vital fact demonstrating the existence of a contract of service.

It is from a combined construction of Sections 1(1), 23(1) of the labour code and the authorities cited above indisputable that control is quite clearly the crucial factor which marks off a worker from an independent contractor or self-employed. The latter who merely sells the end product of his labour is not subject to any detailed control in the manner in which he carries out work. Although control is relevant and still useful, it is thought to have universally fallen behind the needs of a modern industrial, technical and commercial environment. Control has been criticised as theoretically based on the assumption that the master has both technical and managerial superiority over his employee or worker. This assumption according to this view is in today's labour light unsound as many professionals with sophisticated technical knowledge have taken up paid employment.²¹

However, it is apparent that the proponents of this argument have naively failed to notice that control has simply changed its face in modern industrial relations. Today, control assumes the form of the employer's power to discipline an erring staff rather than the capacity to instruct on what to do and how to do it. This fine point

²⁰(1999) CCLR part 4 62.

²¹ John Fleming: *The Law of Tort* Sydney 1977: 358.

was recognised by Jani JCA in *Assurances Des Provinces Reunis v Tiogum David*²² when he noted that the disciplinary power of the employer was the critical factor that showed that the plaintiff was a worker.

Integration Test

The next vital issue is the interesting one that relates to whether the integration and composite tests that are also used under the common law to ascertain the existence of a contract of service apply in the context of the labour code. This question must in Anglophone Cameroon assume greater significance because the labour code did not make any express reference to them as did the factor of control.

The integration test had emerged in England because of the unsatisfactory nature of the control test which led Lord Denning to formulate what later became known as the integration test in *Stevenson, Jordan and Harrison v MacDonald and Evans Ltd*²³. It considers whether a worker's work is integral to the employer's business in which case a contract of service exist or is merely accessory to it, thus leading to a contract for services. Although the court did not say so expressly, it seems obvious from a contextual reading of the decision in *CDC v Akem Besong Benbella*²⁴ that the Buea Court of Appeal was influenced by the principles articulated by Lord Denning above.

From the *Akem Besong Benbella* and *Tiogum David* cases, it is possible for one to be considered a worker although such a worker is not subject to the direct control of the employer. In *CDC V Akem Besong*²⁵ the court in fact easily held that members of a vigilante group engaged by the Cameroon Development Corporation were workers in spite of evidence at the trial that there were not under the direct control of the company.

²² *Supra*.

²³ (1952) T.L.R 101.

²⁴ Suit No CASWP/267/97

²⁵ (1997) 3 CCLR 316

The fact that respondents were amongst members of a vigilante group assaulted by villagers while there were searching for crops stolen from the CDC plantations was considered central and integral to the business of the CDC such that it would for reasons of fairness have been impossible to hold that they were not workers of the corporation. The question of what the respondent was doing when he was attacked was a critical factor that enabled the court to arrive at the conclusion that he was a worker. But could it be said that this test is now part of labour law in the country? It will appear that the answer is in the affirmative since reference was also made to it in *Ruth Eyong & 2 Others v SCDP*²⁶

In spite of what has been said here, it should be observed that the general illustration which is frequently drawn in older English books between a taxi driver as an independent contractor and a personal driver as a servant is not relevant to Cameroon. Under the common law in England a taxi driver is not a servant. He is rather an independent contractor since he hires the car and pays for its daily use. The control over him is casual. The taxi driver in Cameroon who is paid a salary and subject to managerial supervision by his employer is obviously a worker along the lines of the broad principle in the *CDC v Akem Besong Benbella* case

The Composite Test

At present, the courts have broken away from the previous approach which sought to discover the existence of a single critical factor (for example, control) which evidences a contract of service in a labour engagement. The idea previously held that there is a critical factor in a labour relationship the discovery of which a contract of service is in existence has been discountenanced. The composite or multiple factor test is in fact more consistent with section 23 of the labour code because of the similarities between both. Section 23 of the labour code can quite loosely be construed as legislating the principle expounded by the multiple factor tests because it makes

²⁶ 2000 1 CCLR PART 6 21

reference to multiple factors such as control, management and remuneration.

This test which accords more with the modern realities of employment takes a comprehensive view of the contract and considers all the relevant terms like wages, the degree of freedom exercisable by the employee, holidays etc. before determining whether there is a contract of employment. In *Ruth Eyong & 2 Others v SCDP*²⁷ & *Anor* the Kumba High Court relied on the principle that a worker does not provide his own tools and held that the 2nd third party, who provided his own vehicle, paid his own driver and was paid for each trip made was not a worker. This decision was based on the multiple factor test (composite test) principle by which it must be shown that the other provisions of the contract are not inconsistent with it being a contract of employment.

The multiple factor test is definitely the closest anyone has come to a satisfactory definition of a contract of service although it is not in itself exhaustive. The test has a lot to commend it. Importantly, it is a realization that various factors may be responsible for a worker preferring a particular employment. A test that seeks for a single critical factor bears little practical relevance to these considerations. Such a test glosses over some of these important considerations in employment.

It should however be stressed that these tests have increasingly become unimportant and of little value in determining the existence of a contract of service in practice. Employments have become so technical and formal that it is in practice inconceivable to engage another for work without a formal appointment specifying the details of the employment. Indeed, by section 27(1) and (2) and section 28 of the labour code some employments must be in writing.²⁸ Quite apart from this, good labour practice in fact dictates that employments should be reduced into writing with terms indicating the rights and duties of the parties.

²⁷ 2000 1 CCLR PART 6 21

²⁸ For example the ones of apprenticeship and requiring the engagement of seamen to work in Cameroonian vessels are by law required to be in writing.

In practice, there is a tendency to conclude that where this has not been done, it is the fault of the employer.²⁹ This view which cannot be disregarded offhand may be given credence by a circumspect labour court since the employer is the stronger party with greater capacity to manipulate the employment relationship to maximise profit.

Is the Civil Servant a Worker in Cameroon?

Is the civil servant a worker in Cameroon like is the case under Nigerian law which is usually relied upon in the common law courts in Cameroon? The concept of a contract of employment within the framework of the provision of section 1(1) of the labour code excludes mainstream public servants whose employments are governed by public service rules. By this provision, staff governed by rules and regulations in public service, judicial and legal service, the military, security services and auxiliary staffs are outside the contemplation of the definition of a worker.

It follows from this provision and the broad principle expounded by the Supreme Court in *CNPS v Kuma Ndumbee*³⁰ that disputes arising from the employment of civil servants can only be determined at the administrative Bench of the Supreme Court. However, it is important to note that the common law courts have in spite of the provisions of section 1(1) of the labour code ingenuously treated main stream civil servants seconded to state parastatals and corporations as workers. Although the courts themselves have not often made reference to this, it seems that the first sentence of section 24(2) of the labour code supports this judicial practice. This clumsily drafted subsection suggests that non-workers such as public servants sent to work in an enterprise on secondment for a period exceeding six months would have their relationship governed by the labour code.

²⁹ See *Enonchong Memorial College v Edward Joachim Ngale* Suit No CASWP/L.8/87.

³⁰ *Supra*

The Court of Appeals of Bamenda and Buea have for this reason respectively held that a mainstream civil servant seconded to an enterprise for a period exceeding six months is a worker for the purpose of the application of the provisions of the labour code. In *CARFOP v Kan Enroy Moses Payne*³¹ a contention that the respondent who had been seconded from the Ministry of Finance to the appellant employer did not come within the purview of the labour code was decisively rejected by the Bamenda Court of Appeal.

In rejecting this submission, the court noted thus:

“The respondent in the instant case was seconded by the Cameroon Government to serve as an accountant for an indefinite period. The dispute between the parties as to the respondent’s entitlements constitute a labour dispute within the meaning, purpose and in line with the Cameroon labour code”

The Buea Court of Appeal followed a similar reasoning in *Local Government Training Centre v Bobuin John Gemandze*.³² The court also discountenanced the spirited argument by the employer that the respondent who was a public servant seconded from the Ministry of Territorial Administration could only take his dispute with the employer to the Administrative Bench of the Supreme Court. Relying further on the provisions of Art 12 and 13 of Ordinance No 95/003 of 17th August, 1995, the court categorically affirmed the view of the high court that the Supreme Court was not the appropriate court with jurisdiction in such situations. Both decisions may be legitimately construed as bringing this category of civil servants within the definition of a worker as contemplated by the labour code.

However, with due respect to the Court of Appeals in the above cases, it is still doubtful if their decision is sound in principle. This is all the more so because of the equally clear decision of the Supreme Court in *MIDENO v NYANGA Emmanuel*³³. Here, the apex court was categorical that a civil servant does not lose his or her quality as a civil servant because he has been seconded to work elsewhere. In

³¹ 2001 CCLR Part 67

³² HCF/L20/98/1M

³³ Appeal No 113/S/02 03

reversing the judgement of the Court of Appeal Bamenda holding that such secondment has changed the status of the civil servant, the Supreme Court noted that “pursuant to the Decree No 74/138 of 18/02/1974 on the general rules and regulations of the public service, a civil servant on secondment remains subject to the rights and obligations of the public service.” This, in the view of the Supreme Court means a civil servant on secondment “continues to be governed by the Decree” and not the labour code.

It should be stressed that the Minister of Labour has the powers under Section 1(2) of the Decree to declare any class of persons by an order published in a gazette non-workmen for the purpose of the Decree. Thus, even the employees specifically named in the definition of a worker under the Labour code may at the discretion of the Labour Minister be declared non-workmen. Non-workers and main stream public servants are subject to the provisions of Decree No 94/199 of 7th October, 1994 as amended. Under it, such employees have to go to the Administrative Bench of the Supreme Court for the determination of the disputes in their employment contract.

Conclusion

This chapter has examined the idea of a worker in the context of the labour code 1992. Although the concept will appear simplistic from a superficial appreciation, the book has sought to demonstrate that both the notion of worker and contract of service have to be situated within the parameters of the peculiar evolution of the country’s legal history. Thus approached, it will become apparent that in spite of the harmonisation of labour law in the country its concepts including that relating to a worker are not completely context neutral.

The author also attempts to make a connection between a thorough theoretical understanding of the concept of the contract of service in which the worker is involved and the very important question of the security of employment. The author argues that interpreting the labour code from a common law perspective as done

by the courts in the Anglophone provinces tends to lead to decisions that strengthen security of service in the country and ultimately conducive to the developmental interest of the country.

Reference is here made to the very striking decisions in *CDC v Akem Besong Benbella*³⁴ and *Assurances Des Provinces Reunis v Tiogum David*³⁵ all dealing with the status of the plaintiffs at the trial courts as worker. In both cases, the Court of Appeal in Buea and Bamenda respectively took a liberal view on the definition of a worker on the basis of English decisions and went ahead to hold for the workers. Had the courts done otherwise, the workers would have lost, thereby sending a wrong message to employers of labour which will strike a deadly blow on the security of service in the country. This unique and applaudable approach by the common law judge proceeds from the premise identified by Justice Leslie Forbang in *Akamangwa Martin v SONARA*³⁶ that “the right to employment is sacrosanct”

³⁴ Suit No CASWP/267/97

³⁵ 199 CCLR part 4 62.

³⁶ *Supra*.

The Contract of Employment

Introduction

The intricate relationship between the worker and the employer as indeed the entire range of labour relationship is predicated on a foundation of the contract of employment. This contract, is one in which in the express words of section 1 (1) of the labour code “any person irrespective of sex or nationality undertakes to place his services in return for remuneration” under the directions of the employer. By this provision, the critical definitive elements of a contract of employment as has already been noted in chapter 1 are the worker’s service for the pay of the employer.

The employment relationship as already been stated is voluntary and proceeds from the premise that the parties negotiated freely on the basis of the equality contemplated by section 23(1) of the labour code. It follows naturally that employment is a specific contract carrying reciprocal rights and responsibilities. The typical contractual character of employment was recognised by the Supreme Court in *Etude de Me Nkili Martin v Abe Mvogo JC*³⁷ when the court indicated that the pay the worker receives is the consideration for the work done. Furthermore, the court in so holding interestingly noted that a worker who has been unpaid for many months can stop working without notice.

Based on this, the action brought by the employer for damages against the worker in this case which was dismissed by the Court of Appeal was further affirmed by the Supreme Court. Although the court did not say so expressly, it could be seen from the facts and reasoning in the decision that the failure to pay salaries amounted to a failure of the employer to furnish consideration for the services of the worker. This failure to pay the salary was clearly regarded as a

³⁷ Appeal No 66 of 30/5/1972.

repudiation of the employment by the employer justifying the worker to stop working. Although the Supreme Court did not so expressly, this decision is phenomenal because it suggests that the failure to pay salary is regarded as discharging the worker from the obligations of written notice in section 34 of the labour code.

It ought, however, to be observed that the idea of equality between the prospective worker and the employer is a myth.³⁸ This is all the more so in a country like Cameroon where the bulk of people of working ages are unemployed. The Cameroonian labour scene is characterised by very powerful employers well capable of unilaterally dictating the terms of employment without any reference to the worker. This obvious disparity in the power and influence between the employer and worker in fact dictates that a labour court be sensitive in adjudicating labour matters.

The tendency is for the labour court to be sympathetic in construing issues relating to the worker's interest in the same way that a rent court is supportive of the tenant. Although this should not unreasonably result in ignoring obvious provisions of the employment terms or the labour code, it may quite legitimately for instance, require a labour court to award three months' salary as damages for a worker who has worked for only one year instead of one month salary where this becomes an issue under s 39(4) of the labour code.

Validity of Employment contracts

As a rule, for a valid contract of employment to exist, the other elements of offer and acceptance, capacity of the parties, and the legality of the work to be done must be present. The idea that a contract of employment must be a function of offer and acceptance was illustrated by the Supreme Court in *ICC v Madam Giesele Guerrinaud*³⁹ when the court held that the respondent could not on

³⁸ There is no equality between the worker who is already in employment and the employer.

³⁹ Appeal No 59 of 24/8/1978.

her own accord seek to introduce new terms on pay into her contract of employment.

The worker's attempt to unilaterally introduce new terms on pay in the instant case was treated by her prospective employer as a counter offer which could be legitimately rejected. Based on the above principle, the employer's refusal to employ her after her probation was indirectly regarded by the Supreme Court quite correctly as a consequence of the rejection of the counter offer.

It is imperative to point out that by section 2 (1) of the labour code, all forced and or compulsory labour has been strictly forbidden. This being the case, no court will give effect to a contract of employment to which one of the parties has been coerced into. Forced labour is akin to slavery and both have been prohibited by both domestic laws such as the Penal Code⁴⁰ and obligations assumed under international treaties. With regards to the latter, the country has ratified the treaty on the Convention on Slavery of 1926 prohibiting forced labour.

This treaty has created a legal regime under which the presence of elements signifying arbitrariness and coercion in any employment relationship is used in identifying whether a person is working in slave like circumstances. It has, for instance, been argued in the case of the Tole Tea privatisation saga that the fact that the workers did not have any real choices in the privatisation and subsequent arbitrary revision of their terms of contract, their relationship with the new owners could rightly be regarded as veering towards slavery.⁴¹

Indeed, a study by the United Nations Commissioner for Human Rights has concluded that a worker's choice and freedom may be taken away in various ways. This study noted while making reference to contemporary forms of slavery that "the migrant worker whose passport has been confiscated by his or her employer, the child sold

⁴⁰ See section 293(1) (a) & (b) as read with section 342 of the Penal Code 1965. These provisions make slavery a criminal offence punishable with a heavy sentence of from 15 years and above in prison.

⁴¹ See David Weissbrodt et al Abolishing Slavery and its Contemporary Forms; Newyork, 2002, p15.

into prostitution or the comfort woman forced into sexual slavery – all have the element of choice and control taken away from them...” It is thus obvious from this authoritative statement that the introduction of radical unilateral working terms on pay including the arbitrary withdrawal of social amenities as happened in the Tole Tea privatisation by the new owners of the company, clearly demonstrated the absence of both choice and control on the part of the Tole Tea workers in a manner akin to the migrant worker whose passport is impounded or comfort woman forced into sexual slavery.

Employment of Children

It is necessary to deal more exhaustively with the employment of children as this raises important legal issues for consideration. Section 86(1) of the labour code asserts that “no child shall be employed in an enterprise even as an apprentice before the age 14, except as otherwise authorised by an order of the minister in charge of labour...” Subsection 2 of the same provision restricts the working age for young persons as trimmers and stockers aboard a ship to 18 years. Although this has not been explicitly indicated, Cameroon’s adoption of 14 years as the minimum working age is apparently influenced by the common law which defines a child as a person who is less than 14 years of age.

The provision has in spite of its apparent conformity with the common law been subjected to very debilitating criticism⁴² for obvious reasons. The critics have argued that the phrase “except as otherwise authorised” is a deliberate facade giving the government the perfect pretext to disregard the law and allow the employment of persons younger than 14 years whenever it chooses as has been the case in the country over the years. This legislative approach is typical in Cameroon where important legislations, including the Constitution itself have drawback clauses deliberately built into them with the intent to make the law capable of being manipulated by the executive.

⁴² Christy E Enem (2007) “The Prevention of Child Labour: The Case of Cameroon” LL.B Thesis, University of Buea: 2.

The provision has more significantly been condemned for violating the country's international law obligations. Reference may be made to the fact that the country has ratified the International Labour Convention 182 which condemns the abusive exploitation of child labour. Article 2 of this convention defines a child as applying to all persons under the age of 18 years. Although the labour code was enacted before the enactment of Convention 182 in 1999, the labour code could easily have been amended to bring it in line with the country's treaty obligation.⁴³

The above argument is particularly compelling for two reasons. Firstly, there is no reason for the choice of 14 years since the age of majority even under the country's penal legislation is 18 years. Secondly, the country is to the knowledge of government bedevilled by the worst forms of child abuse in the guise of employment which needs to be stamped out.

A recent study has graphically identified child labour as:⁴⁴ "a major problem and a hindrance to development as a large number of children are recruited and used in various types of economic activities instead of attending school. Due to lack of education their intellectual abilities are deterred"

The study concludes that the phenomena "hinders the natural growth of the child and leads to adverse effects on the child's health and moral development" which has led to moral decadence, HIV/AIDS, unwanted pregnancies and other ills."

However, although young persons sometimes below the ages of 14 are routinely recruited particularly in the informal sector, it is obvious that in event of a serious challenge the courts will hold that the minimum age for work which is 18 under convention 182 ratified by the country will take precedence over that prescribed by the Labour Code. This conclusion proceeds from the broad principle of section 45 of the 1996 Constitution as amended which makes ratified treaty provisions superior to local legislation in event of a conflict.⁴⁵

⁴³ The government has an overwhelming majority in a parliament where all laws are initiated and remote-controlled by the executive.

⁴⁴ Ibid.

⁴⁵ See also section 2 of the Penal Code for the same principle.

Non-Cameroonians may by Section 27 of the code only be employed as workers where the employment satisfies the conditions specified in subsection 2 of the same provision. Under the said provision such employments must not only be written, but must be endorsed by the Minister of Labour.

Form of Contract of Employment

The employment contract may, like most other contracts, be entered into either formally or informally. While admittedly there is no requirement that employment contracts should be in writing, it is nevertheless excellent practice for contracts of employment to be written. A written employment contract reduces the possibilities for confusion and conflict in the course of its performance as well as in event of the determination of disputes emanating from its rupture.

Section 24(3) of the labour code which provides that subject to section 27, the existence of the contract may be recorded in whatever manner the contracting parties find convenient has imported the common law informality in the making of contracts into the labour code. This conclusion is compelling in the face of the penultimate sentence in section 24 (3) that any form of evidence may be adduced in proof of its existence. It follows quite clearly that except for the exceptions identified in section 24(3) of the code, employment contracts may be written, oral, partly written and partly oral or implied from conduct.

It is common cause that a contract of employment contracted in either of the methods above is as valid as any other.⁴⁶ There is in view of the present principle no basis to suggest that a written contract is stronger than an oral one although as it has rightly been observed earlier the latter is certainly easier to prove than oral contracts.

Proof of employment is a matter of evidence and depends on the skill and dexterity of the individual legal practitioner. There is no hard

⁴⁶ Traditionally, an oral contract of service is as enforceable and as valid as a written contract of employment.

and fast rule as to the nature and quality of evidence required to establish that employment exist. The courts in Cameroon have relied on a variety of evidence as proving the existence of a contract of employment. In *Poissionerie Populaire Du Cameroon v Shey Ndi*⁴⁷ the Court of Appeal Bamenda held that a contract of employment need not be in writing. The court in the case under reference in fact accepted the evidence of the worker that he was recruited orally as sufficient proof of the employment. The worker's contract could in fact be deduced from a document transferring the worker to work in another station. In the *Ndip Aron v Catholic Education Secretary*⁴⁸ case, the court relied on the workers' payslip for evidence of some of the terms of the employment.

However, section 27 of the code specifically requires contracts of specified duration exceeding three months, or requiring workers to leave outside their town of residence and of foreigners to be in writing.⁴⁹ Although this provision is silent on who has the responsibility of putting the employment in writing, a circumspect reading of section 27 will suggest that this should be done by the employer. The employer's responsibility in this regard naturally extends to that of ensuring that the relevant ministerial endorsement in the employments involving foreign workers be gotten by them.

It is off-course rational that an employer would not be allowed to raise the issue of the non-conformity of the contract of employment with the provisions of section 27 as a defence for a failure to pay entitlements which have become due under the employment. This conclusion is a reasonable one in our labour law context although an employment contracted in disregard of the provisions of section 27 of the code is technically illegal.

The above conclusion is supported by the reasoning in *Enonchong Memorial College v Edward Joachim Ngale*⁵⁰ where the employer contended that the worker was employed subject to the

⁴⁷ (2001) 2 CCLR 127.

⁴⁸ *Supra*.

⁴⁹ Section 45 of the Labour Code also requires the employment of an apprentice to be in writing.

⁵⁰ Suit No CASWP/L.8/87 Unreported.

approval of the Minister of National Education. It was argued on the employer's behalf that such approval was a requirement for the validity of the employment since it was prescribed by section 4(1) of Law No 76/15 of 8/7/1976 which according to this strand of argument derogates from the provision of the Labour Code. The court of Appeal Buea nevertheless held that the worker was still entitled to his claim to damages for wrongful dismissal regardless of the fact that the approval of the minister was not given for his employment. The court applied the equitable principle of estoppel to stop the employer from challenging the employment of the worker.

This decision must be applauded as sound in principle because a party should not be permitted to take advantage of its own deliberate failings. Besides, the decision is consistent with the provisions of section 1(2) of the labour code which states that 'no account should be taken of the legal position of the employer or employee' for 'the purpose of determining whether a person is a worker or not.' It seems plain that the tenor of this decision together with section 1(2) of the code suggests quite strongly that the requirements for written employment contracts in section 27 are exhortatory only.

Types of Contracts of Employment

Contracts of Specified Duration

A contract of employment of specified duration is one with a defined tenure. These are contracts whose tenure has been pre-determined in advance by the parties themselves. Such contracts of employment are generally for the completion of a particular task or for a term certain. Suffice it to note here that a contract expressed to be for life under the common law is no longer regarded as a contract of unspecified duration.⁵¹

The extreme rarity of life employments suggests that there are problems with the idea of life employments generally. Since contracts of employments are not synonymous with slavery, they cannot be as permanent as the idea of life employment suggests. It is thus clear that in the context of Cameroon, even an employment expressly designated as being for life cannot be construed as one that is to last for life. This conclusion that the idea of life employments is alien to the labour code is a function of the interpretation of section 25(2) of the code which explicitly states that fixed term contracts may not be concluded for a time period of more than two years renewable once.

Section 25(1) (a) of the labour code defines contracts of specified duration as a contract whose termination is fixed in advance by both parties. They are as has been observed above for a maximum duration of four years. Where however, the employment relationship continues after the second period of renewal, the contract is by section 25(3) automatically converted into one of unspecified duration.

From what has been stated here, the common practice where employers in private institutions recruit teachers orally for one academic year and continually renew the contract on a yearly basis achieves nothing for the employer. The idea that such engagements do not create a permanent contract of employment is a product of crass ignorance. Once recruited, whether orally or otherwise, a

⁵¹ That should be the same situation under the Labour Code.

worker whose contract is renewed more than once becomes under section 25 of the labour code a permanent staff.

Contracts of specified duration are not subject to notice before termination. Section 25(1) (a) of the code is interpreted to have given notice to terminate in advance thus rendering the need of further notice superfluous. The termination of contracts of specified duration depend on the expressed intention of the parties or the occurrence of an event which is so stated in the contract. They may even depend on the performance of a specified activity. In all such situations, the execution of the task or occurrence of the event puts the employment to an end automatically.

It is not the period of this specie of contract that matters but the object of the contract. Contracts concluded for the execution of a specific task cannot be renewed and are determined once the task has been executed. There is no basis to suggest that a party who did not give notice to terminate a contract of specific duration is assumed to intend its continuation. Employment contracts which from the broad principles enunciated by the Supreme Court in *ICC v Madam Giesele Guerrinaud*⁵² are strictly construed do not admit of such reasoning.

Contract of Employment of unspecified duration

A contract of unspecified duration is defined by section 25(b) of the Labour Code as one whose tenure has not been fixed in advance. These species of employments are the usual form that employments universally take. Contract of unspecified duration are by law meant to potentially last till when the worker reaches his retirement age. There are generally in the majority in the labour domain.

However, contracts of unspecified duration are not to be considered as permanent in the sense that there are interminable. Indeed, such employments may by virtue of section 25(b) of the code be legitimately terminated at any time by either of the parties with the notice prescribed by section 34 of the labour code. A contract of unspecified duration can only be terminated with prior notice of the

⁵² Supra.

party terminating the contract or for the misconduct of one of the parties.

Other Forms of Contract of Employments

Unlike under the previous 1974 labour code where reference was made only to contracts of specified and unspecified durations, the current 1992 labour code has identified other forms of contracts of employments. Section 25(4) of the labour code has tacitly recognized occasional, seasonal and temporary jobs under which temporary job contractors recruit certain workers for employers. These are employments which in the main are dictated by unexpected developments in the enterprise/industry.

Such employments may result from a variety of ways including the unexpected growth of the company as well as urgent works to prevent imminent accidents. These would also include work for urgent repairs of company facilities or buildings which have become dangerous for the worker amongst others. They also involve workers engaged to do seasonal work resulting from the cyclical and seasonal nature of the company's activities.

A temporary job occurs where a worker is employed in replacement of an absent worker or worker whose contract has been suspended, or when a worker is employed to complete a piece of work within a specified time limit which requires additional man power. By Article 5(2) of Ministerial Order 37 governing these contracts, temporary contracts may not be concluded for a period exceeding from one day to 15 days or may they be renewable more than once.

It is worth noting that Article 7(1) of Law No 93/577/P19 of July 1993 provides that seasonal, temporary and occasional jobs which extend beyond their legal tenure without termination will become converted to contracts of unspecified duration. The termination and subsequent re-recruitment of a seasonal worker does not however convert the relationship to a contract of specified duration. It was thus held in *P and T Delegation Buea v Abah Aleh*

Martin⁵³ that a worker who was recruited to work from 1/7/94 to 30/9/94 was a seasonal worker.

The Buea Court Appeal concluded as it did because of evidence which showed that every year the minister allocated money for the recruitment of seasonal workers. The same court held in *Lay Private Education v Ebede Patrick Agi*⁵⁴ that a seasonal worker who was recruited and terminated before being re-employed on a permanent basis could not count the period of his temporary recruitment as forming part of the period for which he had worked for the purpose of the calculation of general damages for the wrongful determination of employment.

⁵³ Suit No CASWP/L.15/2002 unreported.

⁵⁴ Suit No CASWP/L.14/2000 unreported.

Terms of Employment

Introduction

Contracts of employment by their very nature must contain terms specifying points on which the parties have agreed to work. So long as these terms exist, it really does not matter whether they were arrived at orally, by conduct or in writing. Generally, the terms of an employment contract are both a function of statute and the contract of employment itself.

Although some scholars dispute the suggestion that provisions of statutes could create enforceable terms in a contract of employment, this dispute is academic. There is consensus in Cameroon that statutory obligations cannot be excluded by the terms of a contract of employment. The terms of a contract of employment may be either expressed or implied. The Supreme Court in fact had held in *Safra Travaux Public V Tenche Joseph*⁵⁵ that stipulations in statutes have created rights that had become incorporated into the employment contracts to which the provisions relate.

Express Terms

The express terms of employment refer to those stipulations agreed upon by the employer and the worker during the negotiations contemplated by section 23(2) of the labour code. The usual practice is for the contract of employment which has been reduced into writing to contain express particulars defining the conditions of the contract. In most formal employments, the worker is given letters of employment or documents variously titled as conditions of employment, work rule etc. As a practice, these documents normally contain written particulars on the:

⁵⁵ Supra.

- a) Name of the employer and the employee.
- b) Title and description of the worker's job.
- c) The date and duration of the employment.
- d) The scale of remuneration and the method of calculation of wage.
- e) The interval between which wages shall be paid.
- f) hours of work.
- g) Injury, sick, leave, and transport pay,
- h) Pension scheme etc.

Section 29(1) of the labour code also specifically allows the head of an employing enterprise to formulate internal regulations or what in labour parlance is often called work rule to define and regulate the employment relationship. This provision is without doubt a civil law inspired provision. Its pro-employer colourisation has to be situated within the context of the civil law's tendency to veer on the side of the strong and powerful employer. It can only be hoped that the labour code shall in future be revised to redress this anomaly to ensure that the work rule is drawn up by the Employer and Employee representatives.

Whatever their source may be, internal regulations as prescribed in section 29 of the labour code would invariably deal with rules relating to the technical organization of work, disciplinary standard and procedure, safety and hygiene at work necessary for the proper functioning of the company. To be effective and valid, the work rule must be endorsed by the local labour inspector who has the powers to amend them before the regulations become enforceable⁵⁶.

Although there is some controversy under the common law as to whether internal regulations are part and parcel of the employment contract, this controversy is not relevant to Cameroon. The Cameroonian view on the status of internal regulations was clearly stated by Justice Mokwe as he then was in *Moukery v SGBC*⁵⁷. After

⁵⁶ See section 29(3) of the Labour Code

⁵⁷ Suit No HCF/20/98-99 unreported.

noting that the issues of whether they are part of the employment or not depended on the peculiar circumstances of each case, the judge was categorical that such rules will be enforceable where the employer had produced and acted on them previously.

On the basis of this principle, the judge held that a dismissal of a worker in violation of Art 7 of the employers work rules in this particular case was invalid. It may be observed that the same judge had held that disciplinary rules in the employer's regulations had become part of the terms of the employment in the Fomben Thomas case.⁵⁸ These decisions firmly establish the principle that internal rules which had been relied upon previously form part of the employment contract.

Nonetheless, in spite of the proactive tenor of the above decisions, there is in theory no sound reason to limit the principle in these cases to internal rules that have been relied upon previously. Based on the reasonable assumption that once an employer produces internal regulations to the knowledge of his workers he must be taken to have intended their application, it can be safely concluded that the internal regulations need not necessarily have been relied upon previously for them to be valid. A worker who has seen the work rule of his employer and acted in compliance with its prescription cannot be prevented from taking benefits from them only because it has purportedly not been relied upon by the employer.⁵⁹

Section 42 (2) (b) of the labour code provides that a contract of employment may while still in force be amended on the initiative of either party to the contract. Such an amendment must however be mutually accepted by both the worker and the employer for the resultant new terms of employment to be valid and effective. Where, such amendments are suggested by the employer but unacceptable to the worker, any termination of the contract which ensues as a result shall under section 42 (2) (b) of the code be the responsibility of the employer. Under this section, it is immaterial that the reasons for the amendment are well founded.

⁵⁸ Supra.

⁵⁹ See Enonchong Memorial College v Ngale (Supra).

The critical question is: what is the consequence of an amendment which has been opposed by the worker? Put in other words what does “responsibility” as used in the provision mean? Although it is doubtful what “responsibility” as used here means, it certainly does not vest liability on the employer. This conclusion is clearly justified by the penultimate sentence in section 42(2) (a) of the same provision categorically stating that the termination in such circumstances shall only be wrongful if it is not justified by the interest of the enterprise. This conclusion becomes all the more apparent from the Supreme Court decision in *Gwarak Jean v Splangounis Stamatiades*⁶⁰ showing a judicial tendency to construe the interest of the enterprise widely.

The Supreme Court in this case regarded the termination of 17 workers resulting from changes due to a merger of their company with another company as perfectly legal. The dicta in this decision may be interpreted as suggesting that the merger and subsequent changes leading to the loss of these jobs were justified on the sole basis of the interest of the company. Where the amendment is suggested by the worker but rejected by the employer, the contract will subsist unless the worker resigns. It seems regrettably plain from the converse situation that the law is tilted in the favour of the employer with devastating consequences for security of service.

Implied Terms

Like in every other contract, terms may become incorporated into a contract of employment although the parties have not expressly agreed on them. Usually, statute like the labour code, minimum wage legislation and the common law may create obligations that would be implied into the parties’ individual contracts of employment. This may be so even where the employment made no reference to these legislations. It is for this reason that it had become common practice to imply common law

⁶⁰ Appeal No 18 of 31/1/1974.

terms to regulate any lacuna on a significant issue in the express terms of employment of the parties.

An excellent example in our Cameroonian situation is found in section 4 of the labour code. This provision has created a statutory right of the freedom of workers to join trade unions of their choice which no employer can legitimately circumscribe. Reference may also be made to the constitutional prohibition on non-discrimination on grounds of sex⁶¹, the new minimum wage of 28,000 FCFA for workers in the private sector which must automatically be read into the employment of every worker in the country.

These rights inevitably become applicable to every contract of employment such that no worker may be stopped from joining and participating in trade union activities in a union of his choice or paid differential salary on the basis of sex, race or any of the idiosyncratic bases. An employment where the worker is paid less than the minimum salary as prescribed by the SMIG is on the same principle illegal and unenforceable.

By this principle, customs which have become notorious in particular employments or industry are often implied into a worker's employment where the contract is silent on the issue. It would, for instance, be ridiculous for someone engaged as a taxi driver to insist that he has to start work at 8 am and close at 3.30 pm as most white collar workers do. This is so because of the notorious fact that taxi drivers work from early morning till late in the evening. Since in common law terms are incorporated to confer rights and impose duties on the parties, we have for this reason dealt with them extensively as duties of the worker and employers.

Collective Agreement

It is perhaps necessary to discourse the nature of a collective agreement in the light of modern development in industrial relations

⁶¹ See the preamble of the 1996 constitution as amended as read with Article 65 of the same legislation.

in the country. Employments in the huge agro-plantation sectors like Cameroon Development Corporation (CDC), the Banks and Oil Sector etc. are largely influenced by joint agreements between employers and unions to which their employees belong⁶². What is the effect of a collective agreement on an employee's contract of service? Can a worker for example seek to enforce terms in a collective agreement?

The answer to the first question has been aptly provided in sections 18(1) and 21(2) of the labour code. The penultimate sentence of the latter provides that a trade union may:

“make contracts or agreements with any other trade unions, employers' associations, companies, undertakings or persons”

The correct and incontestable interpretation of the above provision must be that trade unions are statutorily empowered to “make contracts” with companies and undertakings employing workers. This interpretation is based on the golden rule for the construction of statutes which in this instance require that the words “make contracts” should be given their plain grammatical meaning.

This construction proceeds from the sound idea that the legislator used the words advisedly. Thus construed, it is certain that the law intended binding agreements. In giving the trade union the powers to make enforceable contracts with employers and others, the labour code recognised the universal importance of collective bargaining in modern industrial relations. The essence of this importance was neatly captured by Professor E E Uvieghara who observes that:

“Collective agreements constitute a very important source of the terms and conditions of employment. Many important terms and conditions of employment are today determined by collective bargaining and reflected in collective agreements. These terms

⁶² Trade unions have been active in the CDC plantation sector as far back as 1946 when the Cameroon Development Corporation Union was formed and started operating. Although the CDCWU was according to P Konings a mere sophisticated means of labour control, it did timidly represent the interest of workers as well as negotiate conditions of work on their behalf. P Konings, *Plantation Labour and Economic Crisis in Cameroon* 1997:525.

include matters such as pension, redundancy, medical care transport and housing allowances, wages and salaries, and many more. Fresh employees normally have the terms of collective agreements applied to them while existing employees have their employment conditions improved upon by the collective bargaining process”

The situation in Cameroon is no different from what has been noted above. Cameroonian law has moved away from the common law doctrine of privity of contract where the contract of employment is strictly the affair of the employer and the worker and the trade unions are seen as interlopers⁶³.

Collective agreements are in principle incorporated into the parties’ employment contract in Cameroon. This view that collectively bargained agreements with trade unions are effective and enforceable is further supported by section 21(2) of the code. This provision, it may be recalled, recognised the possibility for the deduction of union dues from workers’ salaries and attributes the power to do so on “an agreement to that effect concluded between the employer concerned and the trade union to which the contributions are to be paid.”

Our labour law has had a long history of a culture of giving validity to collective agreements which can be discerned from our previous labour legislations. It is for this reason that the Supreme Court proceeded on the basis that terms of collective agreements constitute binding terms in the individual employments of the parties to the collective bargain in *Bakehe Joseph v Regie des Chemins de Fer*⁶⁴. However, this principle cannot be stretched to extend to the idea that a term of a collective agreement excludes the parties from a reliance on stipulations deriving from other sources to which the contract may be ordinarily subject⁶⁵.

The same court has held on this issue in *Safra Travaux Public v Tencha Joseph*⁶⁶ that terms of collective agreements cannot override rights derived from statutory provisions. A submission by the

⁶³ E. E. Uvieghara op cit at 29.

⁶⁴ Appeal No 30 of 19/12/1967.

⁶⁵ See *Bakehe Joseph V Regis des Chemins de Fer*

⁶⁶ Appeal No 72 of 27/6/1974.

appellant counsel in this case that Art 20 of a collective agreement in the public transport sector had created a right to certain payments on a temporary transfer was rejected. The Supreme Court's rejection of the contention was based on the sound principle that such a right from a collective agreement may not be considered as superior to the rights deriving from the express provisions of statutes.

A trade union is in a very strong position with regards to the rights of workers in the country. That it acts for and solidly protects the interest of the worker can no longer be open to any doubts⁶⁷. Indeed, it will be rather absurd to suggest otherwise when section 18(1) of the labour code provides that:

“Trade unions and employers’ associations may: Exercise in any court the rights reserved to civil action plaintiffs in criminal proceedings, in relation to acts causing direct or indirect prejudice to the collective interest of the trade or occupation which they represent”

The issue of the legal effect of collective agreements was further neatly illustrated in *Societe UCB v Allianhu Fidelle*⁶⁸ where the Buea Court of Appeal affirmed the view that terms of a collective agreement of “Convention Collective Nationale des Industries de Transformation” had become incorporated in the workers employment. Based on this, the court held that the failure of the worker to avail himself of its provision as he was entitled to do was fatal to his case. This decision which can rightly be considered as putting the point beyond all doubts was based on an interpretation of section 61(3) of the labour code.

Section 61(3) which relates to payment of workers and provides that “apart from the cases provided for by regulations and collective agreement in force” must be considered as expressly dictating the

⁶⁷ This view receives support from a statement made obiter by Justice L Forbang sitting at the Buea High Court in *National Union of Teachers of Higher Education (SYNES) v Dr Dorothy Njeuma*⁶⁷ that individual members of a trade union which in his opinion had not been registered could still take action where defamatory statements were made against the organisation. It is clear from a careful reading of this case that workers can step into the shoes of their union and claim rights.

⁶⁸ Suit No CASWP/L.20/2003 unreported.

application of terms derived from collective agreements in determining whether a worker may be paid salary during the latter's absence from work. The conclusion that terms of a collective agreement do constitute enforceable terms in a worker's employment is inevitable. This is so as *Societe UCB v Allianhu Fidelle*⁶⁹ from which the principle derives dealt with a dispute as to the correct wage of a worker with the court holding that, that contained in the convention was the enforceable one.

The *Societe UCB* case is also good authority for the situation where an employment expressly incorporates a collective agreement by making direct reference to it. The position in Cameroon would be similar to that relating to direct incorporation of a collective agreement by reference in *National Coal Board v Gally*.⁷⁰ Here the contract of some mining deputies stipulated that their wages were subject to the agreement for the time being in force in the industry. It was held by the English court of Appeal that since both the employers and the workers had acted in terms of the agreement which expressly provided that this should form part of the contract of employment it was not necessary to decide the question of incorporation. Their action had in the view of the court settled the issue of the applicability of the collective agreement.

The failure, however, to expressly incorporate some item of the collective agreement does not rule out completely the possibility of it being incorporated as an implied term of the contract. Sometimes, a term of a collective agreement, custom or practice which has not been expressly referred to may be incorporated to give business efficacy to an individual contract of employment. The Supreme Court for this reason held in *B.N.C.I v La Dame Boulier*⁷¹ that common practice on leave was imported into the workers employment although the contract did not make any reference to it.

In the *Societe UCB* case, counsel for the appellant employer argued that a certain circular Note No 2/MTPS/DT/SRP of 14th

⁶⁹ Ibid.

⁷⁰ (1958) 1 W.L.R:16.

⁷¹ Appeal No 202 of 16th May 1961. See also the English Court of Appeal decision in *Sagar v Ridebalgh & Sons* (Supra)

October, 1995 introduced or influenced terms in the employment contract of the parties with particular reference to wages. Although the court did not expressly decide this argument, a careful reading of the entire judgement suggests that the court acceded to this contention. Indeed, the labour code itself has made provision for the Minister of Labour and Social Insurance to issue regulations and circular notes on a wide variety of matters⁷². These regulations inevitably assume the status of subordinate legislation capable of full implementation.

Nevertheless, it is not to be supposed that since a term of collective agreement or custom may be incorporated into the individual's contract of service, the workers term merely becomes an additional term of the employee's individual terms of employment. The position is rather similar to the practice of incorporation by reference in insurance contracts where the incorporated terms merely constitute a composite contract with the initial insurance contract.

⁷² See section 101(1) of the labour code.

Duties of the Employer

Introduction

The employment contract is one of mutual rights and obligations between the employer and the worker. Both sections 1(1) and 23 of the labour code in fact define the employer with regards to managerial power. The employer is by this definition vested with certain specific responsibilities in the employment relationship in the absence of which it is literally impossible to say that employment exists.

These responsibilities / duties of the employer in the most part translate into the rights of workers. These duties (which are varied) are both statutory and common law responsibilities that generally enhance the efficacy of the contract of employment. Apart from the duty to pay wages, employers owe various common law duties to the worker. These statutory and common law obligations constitute implied terms in the contract of employment in the absence of an express agreement to the contrary. However, it is excellent practice for a contract of employment to expressly contain the duties of the employer.

Duty to Pay Wages

Sections 1 (1) and 23(1) of the labour code defines employment in terms of the service of the worker for the remuneration of the employer. It follows from this definitional approach that the wage is the employer's consideration for the services of the worker. Equally significant is the fact that by section 67 of the Labour code "wages shall be payable in legal tender" only. The same provision further notes interestingly that any other method of payment shall be unlawful while describing

any stipulation in the contract of employment to the contrary as “null and void.” The combined effect of these provisions clearly demonstrates that there can neither be employment without pay nor one where payment is in kind.

In view of the above, it is imperative for an agreement on pay to be expressly stated in all employments. Where however there is none, the law will step in to insist on one. In establishing such a wage, the court or the labour inspector at the conciliation stage shall ensure that it is comparable to what is paid in similar employments subject to the fact that under no circumstances should what is fixed fall below the minimum wage of 28,000 FCFA per month.

Besides, generally, from section 62(1) and (2) of the labour code, workers’ wages may be fixed or determined through negotiations within the frame work of the collective agreement or company agreement. Where this has not been done yet there is a collective agreement on wages, the latter would take precedence over any wage in the employer’s enterprise.

The above principle was affirmed by the South West Court of Appeal in *Societe UCB v Allianhu Fidelle*⁷³ when the court insisted that the wage specified in a collective convention was the one to be enforced in event of a conflict between it and that contained in the employment contract of the worker. Wage may also be fixed by a decree issued by the Labour Minister, determining what the pay should be. These provisions are intended to protect ignorant workers who may be otherwise exploited by unscrupulous employers.

It must be stressed that under no circumstances should a workers’ pay be below the 28,000 francs prescribed by the new prime ministerial text on minimum wage in private sector employments. The emphasis on minimum wage is particularly significant because the payment of extremely low wages to workers has been judicially criticized as amounting to a violation of a country’s treaty obligation. Since the ILO and contemporary

⁷³ Supra.

thinking⁷⁴ regards extremely low wages as a “cause of forced labour and debt bondage”, the payment of low wages to workers would ordinarily mean that the workers International Labour Organization convention rights are breached. The state of Cameroon is to this extent obliged by Convention No 131 (Convention Concerning Minimum Wage Fixing with Special Reference to Developing Countries, 1970) ‘to prevent the payment of extremely low wages that are insufficient to maintain the workers and their families.’”

It was in the above circumstances not surprising that the leading papers in the country interpreted the privatisation of Tole Tea Estate to Brobin Finnex as bringing about a situation where the workers have never known peace.⁷⁵ This description, which in essence links the crisis resulting in industrial instability in the tea sector to poor wages, was appropriate in a situation where the new owners “unilaterally introduced new salary structures falling below the prescribed minimum wage.”⁷⁶

Duty to Provide Work

As a general rule, an employer is not under a duty to provide work to the worker so long as the latter is paid his wages. Although admittedly, section 61(1) of the labour code defines and relate wages to “work done or to be done or services rendered or to be rendered” this in no way suggests that the employer is compelled to give the worker actual work to do. This view is abundantly supported by the provisions of sections 1(1) and 23 of the labour code both of which simply require the worker to place his services at the disposal of the employer and no more.

⁷⁴ The Indian Supreme Court has held in *Bandhua Mukti Morcha v Union of India and Others* Supreme Court Reports (1984) Vol 2 67 that workers paid below the minimum wage were bonded workers. See David Weissbrodt et al ‘Abolishing Slavery and its Contemporary Forms’ Newyork, 2002, p15.

⁷⁵ The Post Newspaper of the 24th April 2007.

⁷⁶ Ibid.

Admittedly, the Supreme Court appears to have suggested in *Lacore Jean v Alubassa*⁷⁷ that there could be an obligation to provide work to a worker which is normally suspended during the period of leave, the decision cannot be construed to imply that this is an enforceable duty. Properly construed, the decision was only stating the rather obvious principle that an employment subsist during the period of leave. The court was simply affirming that the worker who timed his notice of resignation to run during the period of leave was perfectly right to do so.

However, the position is clearly different in a piece contract. Under this regime of engagement, there is an obligation on the employer to ensure that the worker is given work which is sufficient to enable him earn a wage similar to those of workers paid on a unit time basis in equivalent employment.⁷⁸ The express creation in section 63 of the labour code of a duty on the employer to give the worker work to do in piece contracts equally demonstrates that the silence in section 1 and 23 of the code were deliberate.

The reasonable interpretation to be put on this silence is the conclusion that the legislator intended that the employer is not under a duty to provide work to the worker. The situation in piece or commissioned contracts could not be expected to be otherwise or else it will lead to a chaotic differentiation in pay for workers doing the same job. The obligation to provide work will also apply where the worker's occupation is such that the opportunity to work is an essential feature of the contract because of the possibility of loss of reputation due to inactivity.

There are statutory limitations on how much time a worker should spend working in public and private agricultural or non-agricultural enterprises. While the labour code has not expressly stated so, it is certain that these limitations are dictated by the overall health interest of workers. Thus approached, the

⁷⁷ Appeal No 177 of 25/4/1961

⁷⁸ See section 63 of the labour code. The section gives practical expression to the spirit of non-discriminatory pay prescribed in section 61(2) of the labour code.

provisions of section 80 of the labour code which prescribes these protections should be strictly construed and scrupulously respected. The section mandatorily limits the working period per week in non-agricultural establishments to forty hours. Following from section 80(1) of the code, where an enterprise has an official 5 days working week, the worker should not work beyond 8 hours a day. Similarly, where it has a six days working week the worker works for 6.6 hours a day.

Subsection 2 of section 80 which prescribes the working period for agricultural and related undertakings limits the working period in this domain to two thousand four hundred hours per year. This global calculation is however subject to the fact that the worker's period of work should not exceed a maximum limit of forty eight hours a week. It is important to stress that both provisions reflect government policy on the regulation of work and cannot be subverted or modified by employment contracts offering less favourable conditions.

The principles requiring scrupulous respect for benefits and protection prescribed by the labour code was classically illustrated by the Supreme Court in *Guinness Cameroon V Mbiafjeu Jacque*⁷⁹. In this case the Supreme Court confirmed the decision of the court of appeal which had held that the appellant (Guinness) was obliged to pay the respondent his housing due in terms of section 68 of the old labour code. The attempt by the employer to use the terms of the employment to circumvent its obligation to pay the housing dues as prescribed by the code was in this decision regarded as patently illegal.

This principle was also followed in *Enongene Williams V University of Buea*⁸⁰ where the court in Kumba awarded to the plaintiff special damages representing the extra hours he worked in excess of the statutory prescribed period. The court did so in

⁷⁹ Appeal No 5 of 16/11/1978.

⁸⁰ Unreported decision of Kumba magistrate court. The author was counsel for the defendant in the case.

spite of the fact that the plaintiff worker's action for wrongful dismissal was dismissed out rightly for lacking merit.⁸¹

Rest Periods

A worker can neither be expected to work all year round without resting nor may he be required to work all day long without rest. Although the terms of the contract of employment are generally determined by the contract and or collective agreements, there is a statutorily provided rest periods which must inevitably be read into all contracts of employment regulated by the code. This mandatorily means that all employments have implied terms giving the worker a rest interval.

The “rest interval” refers to periods where work is interrupted so that the worker can use his time as s/he pleases. It is also a period for which the worker is not required to remain at his place of work. The provision of a rest period which is dictated by the overall interest by government to maintain a healthy working population cannot be modified even by the contract of the parties. It goes without saying that a worker is not by law obliged to work during public holidays etc. There are broadly two categories of rest intervals viz weekly rest and leave.

Weekly Rest

The traditional practice is that the worker is entitled to a one day period of rest for a seven day working week. Section 88 of the labour code makes the provision of this rest period compulsory. The section which is more specific than what is obtained elsewhere prescribes that a worker is entitled to a rest period of twenty four consecutive hours. The rest period by this provision

⁸¹ 1. See section 80 of the labour code.

2. Work in offices, educational institutions, health institutions etc. will fall within the definition of working in non-agricultural establishment.

3. Appeal No 5 of 16 November, 1978.

4. Unreported decision of court of first Instance Kumba.

“shall as a rule” be on a Sunday. Apart from the fact of this categorical insistence on this rest period, the section further warned that this may not be replaced by a compensatory allowance.

However, regardless of the apparent strict and inflexible slant of section 88 of the labour code, questions may still arise about whether the provision is absolute. Could the employer in certain special types of employment for instance modify the rest provisions prescribed by section 88 of the code? Should an employer who provides security services for instance not be capable of modifying its rest procedure so as to ensure that it has personnel on Sundays for work?

It will certainly be absurd to suggest that this cannot be done. Subsection 2 of this provision leaves open the possibility of adopting a procedure that can result in a flexible application of the rest period to take account of the peculiarities of certain employments. The payment of compensation for a worker required to work on a Sunday in such a situation does not violate the law. The same principle will apply⁸² with rest period involving national holidays such as national day, labour day, including rest periods for Christian and Islamic religious festivities such as Christmas and Salah etc.

Leave

As a general practice, every worker is entitled (after working for certain defined periods) to a holiday for a specified period with full pay. This period of holiday is referred to in employment parlance as leave. Section 89(1) of the labour code obliges the employer to offer a worker paid leave “at the rate of one and a half working days for each month of actual service.”⁸³ The

⁸² Uvieghara opcit at 110.

See *Eningene Williams V University of Buea* (Supra) where a court awarded damages representing compensation for a security man who worked on Sundays.

⁸³ For young persons under 18 years leave accrues on the basis of two and half days per month S.10(1) labour code

provision however, represents only the minimum standard of permissible leave. Since employment is a contract, the parties could themselves negotiate and agree on better leave conditions.

Since leave is calculated on the basis of yearly services, it is clear that a worker who has put in a year of continuous service is entitled to at least an annual leave of eighteen days. The calculation of a year of effective service for the purpose of leave shall include periods where the worker was absent from work due to industrial accident and sickness. This is subject to the fact that the accident / sickness was endorsed by a medical accident practitioner approved by the employer. Section 89(3)(b) of the Labour code however limits the period of absence from sickness for the purpose of the calculation of leave to a period not exceeding six months.

It seems rather obvious that the Labour code's provisions on leave are particularly liberal. Few workers for instance know that there are under section 89(4) of the Labour Code entitled to a maximum of ten days special leave on the "occasion of family events directly concerning their homes." While it is not possible to itemize all the possible situations when this special leave may be claimed, it seems reasonable to suggest that such family occasions will include such matters like the death of a family member etc.

The difficulty here is that related to whether "family" as used under the section refers to the nuclei or extended family member. A reasonable interpretation will suggest a nuclei family because of the limiting effect in the further phrase that "directly concerning their homes" in the provision. Although some may contend that the family referred to is the traditional African extended family because the code must be situated within its African parameters, the additional phrase makes this construction unrealistic. It is equally plainly doubtful that it was meant to include family events like marriages. This latter conclusion is based on the potentially disruptive effect of the multiple leaves that this kind of interpretation will lead to in a country where polygamous marriages remain widespread.

Except for maternity leave pursuant to section 90(2) of the code, the workers' right to paid leave may not be taken in an arbitrary and disorderly manner. It was thus held in *Hannah Nganje v University of Buea*,⁸⁴ that a worker who after applying for leave took off without waiting for the approval of her employer had acted unreasonably. The claim of the worker that she had been wrongfully terminated was dismissed by Ekoko J in the Buea High Court because of this conduct of abandoning her service before a formal leave decision was taken amongst others.

Duty to Provide Safe Working Environment

Section 95 (1) of the Labour Code sets a high hygiene and safety standard in the Cameroonian work place. While the employer is by this provision required to provide the worker with a safe working environment, it is Arrete No 039/MTPS/IMI of 26 November, 1984 which fixes the general modalities of hygiene and safety at the work place.

This arête was enacted pursuant to subsection 2 of section 95 of the code by which "occupational health and safety conditions shall be determined by orders of the Minister in charge of Labour issued after consultation with the National Occupational Health and Safety Commission." Section 95(2) further requires this ministerial arête or order to "aim at securing for the workers standards of hygiene and safety conforming to those recommended by the International Labour Organization and other internationally recognized foreign bodies." The provision has in theory to be applauded for setting a lofty standard of safety and hygiene in the Cameroonian work place.

What does this standard require in practice? Although this has not been indicated, it is obvious that such safety standards must necessarily involve the three elements enunciated in the

⁸⁴ Hcf/1.8/98 This author was counsel for the defendant. Note the court also held that the worker who herself resigned cannot turn around to claim damages for wrongful termination.

celebrated English case of *Wilson & Clyde Coal Co Ltd v English*⁸⁵. The Wilson Clyde case has set a three pronged duty on the employer to provide safe machinery, safe working systems and responsible staff. Bawak JCA had recognized this threefold like nature of the duty owed by the employer as applying in the context of the country's labour law.

The judge, in dealing with his own rhetorical question as to whether an employer owes any duty of care to his servant in *CDC v Akem Benbella*⁸⁶, pointed out that this duty exist. Identifying the duty as that enunciated in *Smith v Baker & Sons*⁸⁷, Bawak JCA as he then was identified the substance of this duty as requiring "reasonable care to provide proper appliances and to maintain them in proper condition, and to carry on his operations as not to subject those employed to unnecessary risk."

Noting that this three pronged duty in essence amounts ultimately to the simple responsibility of a master to ensure his operations are carried out in a safe manner, the court held the CDC liable for not providing the respondent with the appropriate weapons to ward off an attack of the nature they were exposed to. It is from this case certain that a breach of this duty will in our context also amount to a violation of section 95 of the Labour Code with the expected consequences.

Duty to provide Workers Certificate of Service

The employer has a duty under section 44(1) of the labour code to issue to a departing worker a certificate of service. Although the law does not impose any format for the presentation of this certificate, the section nevertheless requires that the certificate contain information relating to the workers date of recruitment and departure, the various positions held with dates etc. However, it must be stressed that under no

⁸⁵ (19)37 All E.R 628.

⁸⁶ *Supra*.

⁸⁷ (1891) AC 325.

circumstances may an employer, under section 44, make reference to the reason for the termination of the employment. It is apparent that section 44 deliberately aims at protecting workers whose employments has been dismissed or terminated from possible post-termination prejudice which may result from damning information in the certificate of service.

Although this is a salutary provision which distinguishes our labour code from Anglo-Nigerian law⁸⁸ on the same point, it must nevertheless be pointed out that it has a tendency to weaken the worker's security of tenure. This is so as it potentially creates the impression that the worker could simply be asked to leave at the whims and caprices of the employer so long as the employer gives him the certificate of service.

An employer who fails to provide a worker a certificate of service as prescribed is liable under section 167(1) of the labour code to the payment of a fine of from 100,000FCFA-1,000,000FCFA. In *Enongene Williams v University of Buea*⁸⁹ a security officer who was dismissed due to negligence in performing his duties by the university was awarded general damages on grounds that he was not issued a certificate of service. Although the plaintiff's original claim in this case for wrongful termination was rejected, the court significantly held that the provision of section 44 of the code could not be ignored even where the worker did not claim it.

Vera Ngassa J sitting at the High Court Buea criticized the tendency of employers to treat the duty to provide a certificate of service under section 44 in *Ndongo Fred Ebanja v The Chambers of Agriculture*⁹⁰. After condemning the attitude of employers of treating section 44 of the code "as if it is optional and they have a discretion to deliver or not to deliver" it, the erudite judge categorically noted that "section 44 is not a suggestion but a commandment and a

⁸⁸ Under Anglo-Nigerian law there are no such restrictions. In fact on the contrary, certain now defunct Decrees under the military specifically debarred workers who had been dismissed from employment from participating in the electoral process.

⁸⁹ *Supra*.

⁹⁰ (2008) 1 CCLR Pt 12 62.

fundamental right of the employee on pain of penalty.” She then went ahead and awarded damages of a million francs against the defendant for the breach of this duty.

The critical question is: are these decisions sound in principle? Admittedly, although the decision to award damages to the worker who is the victim of the violation and not a fine for the benefit of government which has suffered no loss makes sense, it seemingly runs contrary to the express provisions of section 167(1) of the labour code. In *SONEL v Menu Daho*⁹¹ the Court of Appeal Buea cleared the possibility of any doubt over this issue when it held that the failure to issue a certificate of service attracts the liability of a fine payable to the state treasury. A similar decision had also been taken by the same Court of Appeal Division in *Offa Enow v C.D.C*⁹².

In spite of what these Court of Appeal decisions have established, it is possible for a circumspect labour court to award some form of compensation to a departing worker who was not issued with a certificate of service as Vera Ngassa J did in the *Ndongo Fred Ebanja* case. Such compensation legitimately falls within the undoubted scope of the labour court’s powers to award special damages. Where the non-issuance of a certificate of service has caused prejudice to a worker (for instance the worker had missed a job offer because of the absence of the certificate), special damages should be awarded under section 39(4) of the labour code. There is no purport in suggesting otherwise only because the act of the employer has also opened him up to a fine.

⁹¹ CASWP/10/2000 Unreported.

⁹² HCF/1.023/2001-2001 Unreported.

Duties of the Worker

Introduction

As well as rights, workers also have duties. The labour code defines a worker in terms of section 1(2) as “any person irrespective of sex or nationality, who has undertaken to place his services” under the control of the employer. The worker is by this definition duty bound to offer his services to the employer in conformity with the employment terms. It is for this reason that the Supreme Court regarded the worker’s service as the consideration for the salary he receives in *Me Nkili Martin v Abe Mvogo*⁹³.

Duty to Render Personal Service

Sections 1 (1) and 23(1) of the labour code makes it clear that the workers primary duty is to provide service to the employer⁹⁴. By the very nature of the employment relationship, the worker is inevitably required to present himself for work and be ready and willing to serve under the directions of the employer. It is in fact literally impossible to talk of employment in the absence of this duty. The interesting decision of Ekoko J who had held that a worker who was in the habit of persistently abandoning her service was in breach of the duty to render personal service in *Hannah Nganje v University of Buea*⁹⁵ illustrates this point. Her action for wrongful termination was for this reason dismissed for being devoid of merit.

Section 31 of the labour code mandatorily requires a worker to personally work for his employer during his/her working hours. A breach of this duty results in the rupturing of the employment relationship for which the worker could be

⁹³ Supra.

⁹⁴ See section 1(1) and 23(1) of the labour code

⁹⁵ Supra.

dismissed. It was thus held by the court of Appeal Buea in *Catholic Education Secretary v Ndip Aaron*⁹⁶ that a worker who refused to go on transfer was rightly dismissed. Although this was not expressly stated, based on the dicta in the decision of the international labour tribunal in *Re Duran*⁹⁷ a worker whose sickness is such that renders him completely incapable of working for the employer may be terminated. In the *Ndip Aaron* case under reference, the Court of Appeal Buea ignored a claim by the worker that he could not go on transfer because of his poor health.

Duty of Faithful Service

A worker must carry out his work in an honest and responsible manner⁹⁸. This principle is a direct function of the provision of section 31(1) of the labour code requiring the worker to:

“devote all his gainful activity to the enterprise , save as otherwise stipulated in the contract provided that he may , unless otherwise agreed, undertake outside his working hours any gainful activity which is not liable to compete with the enterprise or prejudice to the due performance of the agreed services.”

The provision requires a worker to work for the employer in accordance with the employment contract of the parties. It must therefore be understood that it is the employment that determines what the worker should do.

Employment is construed strictly. An attempt by the employer to play boss and require the worker to do things not contemplated by the terms of the contract could be politely ignored without any adverse consequences to the worker. The employment contract is not guarded as jealously as the marriage

⁹⁶ *Supra*.

⁹⁷ Judgment No 375 of the Administrative Tribunal of the ILO cited with approval in *Re Duran* No 3 Judgment No 543.

⁹⁸ This requires the worker to serve his employer with good faith and fidelity. See *Ovieghera Op cit* at 38.

institution, hence the worker may, unless otherwise agreed, use his private time to improve his earning capacity elsewhere.

However, such private work should not be such as to compete with that for which the worker is engaged. The old English case of *Hivac v Park Royal Scientific Instruments Ltd*⁹⁹ will apply with equal force in our context. The court restrained very skilled workers in the respondent's company from working for their competitors during their spare time on Sundays. Quite apart from the fact that the workers should not work for competitors, there was the additional danger that their spare time work could potentially compromise the respondent's company trade secret.

The worker is under contractual obligation to ensure that work is done in a way that does not undermine the interest of the employer. This duty which flows from section 31 of the labour code requires that the service is performed in a way that should not cause loss for the employer. The non-respect of this duty could attract disciplinary sanctions from the employer. In *Omong Etienne v Cameroon Airlines*¹⁰⁰, a worker who was engaged in the fraudulent performance of his employment resulting in serious losses to the employer was dismissed. His action challenging the dismissal was for the reasons articulated above dismissed.

It is a critical condition of the employment relationship that the parties to it conduct themselves in a manner that the trust and confidence essential for employment is maintained. Any dishonesty of any sort by the worker strikes at the core of the employment relationship and breaches this duty. Although dishonesty in employment may take any form, often it involves an attempt by an employee to use his position for undisclosed personal gain.

It could relate for instance to the acceptance of bribes or the making of a secret commission etc. It was in *Othou Messendi Jean v Socacao*¹⁰¹ held by the Supreme Court that the involvement

⁹⁹ (1946) Ch 169.

¹⁰⁰ Suit No HCH/1.15/2000-2001 unreported.

¹⁰¹ Appeal No 83 of 7/6/1972.

of a worker in theft of the employer's property amounts to a breach of confidence justifying the worker's dismissal. The Cameroonian position in this province of the law is not different from what obtains in Anglo-Nigerian where the classical example of the application of this principle was illustrated in *Sinclair v Neighbour*¹⁰². Here an employee who borrowed from the shop till without the permission of his employer and repaid the money a day after was fired by the employer. The employee's claim for wrongful dismissal was dismissed because the unauthorized borrowing was considered a serious breach of the duty of good faith.

However, although the principle in the *Sinclair* case has been followed in Cameroon,¹⁰³ it should be stressed that the employer cannot succeed if he fails to prove the act that he claims amounts to a breach of a duty of good faith. It is therefore not enough for the employer to merely assert that there has been a loss of confidence. The above principle was affirmed in *Société Shell Cameroon S A v Kemajou*¹⁰⁴ where the Supreme Court confirmed the decision of the lower court awarding a worker damages for wrongful dismissal. In so holding, the court rightly noted that the employer was bound to establish that the worker was actually responsible for the loss of the money as they alleged. The court criticized the employer's reliance on the grounds simply of loss of confidence noting that loss of confidence was a vague basis for termination.

Duty of Care and Skill

The worker is contractually and by legal implication bound to act with reasonable care in performing his duties. This duty also in the main requires the worker to take care of the employer's property. An employee who negligently allows his employer's

¹⁰² (1967) 2 QB 279.

¹⁰³ See *Catholic Education Secretary v Mary Atem Musono* (Supra)

¹⁰⁴ Appeal No 79/S/04-05 of 12/5/2005.

property to be stolen or causes its wilful damage will be in breach of his employment contract and liable to dismissal. The worker must also be careful that his conduct does not harm fellow workers or outsiders so as to impose vicarious liability on his employer.

The degree of care expected however varies with the employee's seniority at his work place and the responsibility entrusted to him. It will therefore in law be wrong to expect too high a standard of care from a junior staff that has not been on the job long enough. A dismissal of such a staff for negligence in the manner of work will be wrongful even where the negligence caused prejudice to the employer. The issue is one of fact to be left to the appreciation of the court in an objective manner.

Duty to obey reasonable orders

The duty to obey the reasonable orders of the employer is part of the obligation of good faith in the employment relationship. It is both under the common law and statutorily required that a worker should submit to his employer's control in the course of the employment. Section 1(1) and 23(1) of the labour code in fact codifies this common law duty which requires a servant (worker) to respect the reasonable orders of the master (employer). There is no way one can really talk of employment in the absence this duty since this will mean that the worker will be at liberty to do as s/he pleases.

The duty to respect the reasonable orders of the employer is of great antiquity. It was read into the previous labour codes in *Gwarak Jean v Splangounias Stamatious*¹⁰⁵ where the Supreme Court held that an employee who responded rudely when questioned by the employer about the apparent negligence with which he had worked was justifiably dismissed. The worker in question, a night watchman, had been summarily sacked when he retorted that "I am not your boy, I am not your slave, I am

¹⁰⁵ Appeal No 18 of 31st January, 1974.

neither your bodyguard leave me in peace” when told to do his job carefully.

There are a variety of cases decided pursuant to the current labour code which followed the reasoning in the Gwarak Jean’s case above. In *Catholic Education Secretary v Ndip Aron*¹⁰⁶, the Buea Court of Appeal held that a worker who had refused to respect the orders of his employers transferring him from Bojongo to Fontem had by his own actions put an end to his employment. It did not matter in the case under reference that the worker had attributed his inability to go to on transfer on health grounds.

That the refusal to go on transfer is a misconduct justifying summary dismissal was further stressed by Vera Ngassa J in *Ndongo Fred Ebanja v The Chambers of Agriculture*¹⁰⁷ when she held that:

“....a refusal to go on transfer was misconduct enough to warrant summary dismissal. A worker cannot pick and choose where and when he should be transferred and after several warnings ...still refuse to go. That is untenable. To hold that the plaintiff’s dismissal in such circumstances was wrongful would be to set a bad precedence.”

It is particularly revealing that the judge held as she did above because the plaintiff worker had tried in evidence to suggest that his transfer was punitive. He had claimed that his superior boss one Hon Philemon Ajibolo had wanted to have a homosexual relationship with him and invited him to a prestigious hotel in Yaounde for the purpose without success. In spite of this, Vera Ngassa J known for her strong Pentecostal Christian commitment did not hesitate to insist on the need for the respect of the reasonable orders of the employer as she did above.

The Court of Appeal Buea had similarly held that the dismissal of a driver who had disregarded his employer’s orders not to carry fare paying passengers was correct in *Ayuk v Mamfe Rural Council*¹⁰⁸. Not even the intervention of high government official in the person

¹⁰⁶ *Supra*.

¹⁰⁷ (2008) 1 CCLR Pt 12 62.

¹⁰⁸ Suit No CASWP/L.1/95 Unreported.

of the governor of the province could dissuade the council from dismissing the worker.

Intellectual Property Rights in Employment

Introduction

It is necessary to discuss intellectual property rights in brief in a book on labour law. This is so for two reasons. Firstly, there is a need to understand the applicable rules for the determination of the ownership of intellectual property created by a worker in the course of employment. Secondly, it has become imperative to clear two types of misconceptions in the domain of intellectual property that are popularly bandied about even by people who should know better.

For the latter, this clarification has become essential because of the erroneous view in labour circles that work is limited to physical endeavour. Another strand of this view sees wealth only in terms of money, houses, cars, land, bonds etc. Since work includes creative and inventive endeavours which may sometime be abstract, it is absolutely essential to understand how these are dealt with in the context of the relationship between the employer and the worker.

While it is apparent that the rigorous scientific endeavour of the scientist, the sublime creative effort of the artist, and the work of the social scientist and entrepreneur which may sometime be abstract has proprietary value attributed to them, it is sometimes difficult to ascertain who should have the right to the intellectual property attributable to them. It is important to deal with these issues in the context of employment. This is all the more important for the additional reason that the Bangui Treaty of February 24 1999 recognized the role of intellectual property in the achievement of technological development in a nation.

Intellectual Property

What we may ask is intellectual property which has to be protected? The notion is a generic term encompassing a variety of sub notions such as patent, trademarks, copyrights etc. All these are legal contraptions developed to protect the product of the intellect or inventions from being unjustly exploited by persons who are not their authors.

Although intellectual property law's main concern was in the beginning to protect ideas or inventions described as original, exclusively approaching the notion from this perspective would be misleading under the current dispensation. The idea of intellectual property is most vividly captured in the nature of a patent. The patent best describes the conceptual attribute of intellectual property because of its quality of being the most valuable to the inventor and most dangerous to competitors for the reason that it excludes both independent devisers of the same idea as well as imitators from exploiting the invention covered by a patent.

A patent is defined as “a grant by government of exclusive rights to an inventor which is conditioned upon the disclosure of the invention to the public.”¹⁰⁹ So who is an inventor for which this protection is granted? An inventor is someone who in the express words of Art 1 of the Bangui Treaty 1999 produces “an idea that permits a specific problem in the field of technology to be solved in practice.”

Article I of the Treaty goes further to define a patent as the title granted for the protection of an invention. Where therefore a scientist invents something, he has to apply for a patent which should give him/her the exclusive right to use and sale the invention for twenty years. It cannot be expected to be otherwise since it will be terribly unfair to allow another to copy, mass produce and sale the invention of another! It is perhaps for this reason that Justice Holmes observed in *The Coca Cola Co v The Koke Co of America* that the

¹⁰⁹ R C Nash & J C Cibinic Federal Procurement Law Vol 1 J W University 1977: 692.

attempt to use another's intellectual property in this case a trademark amounted to palpable fraud.

For a scientific invention to be protected by a patent, it must by the provisions of Art 2 of the Bangui Treaty involve an inventive step as well as be such as to be capable of industrial application. The provision of Art 2 is mandatory. All applications for patent must contain a statement of facts showing these features in the invention otherwise they would not be granted. To be an invention, what the worker's effort/science has produced must under the treaty be novel i.e. different from the prior art or existing technology. These grounds for the grant of patents under the treaty reflect a principle of near universal application. This is explained by the fact that the Bangui treaty has incorporated by reference major international conventions regulating intellectual property rights in the world.

The crucial question is who owns an invention that was done in the course of employment? It would be necessary to preface the answer to this question with the observation that the answer to this question is no longer a function of the common law even in the Anglophones regions of Cameroon. It is on the contrary found in the provisions of Art 11 of the Bangui treaty. Under this provision the central consideration is the terms of employment between the employer and the worker. Where there is a term indicating that patent is to be granted to either party in the employment, such a term has to be scrupulously respected.

However, in the absence of contractual specification, the patent of an invention of a worker resulting from the course of employment shall by virtue of Art 11(1) of the treaty belong to the person who commissioned the work or the employer. The principle in Art 11 is different from what obtains under English law where patent in respect of an employee's invention belongs to the employee where his/her work does not require inventive activities.

There is little doubt that this is yet another predominantly civil law oriented legislative provision known for its typical support for the powerful employer. It is however worth noting that as a matter of public policy subsection 3 of Art 11 states thus:

“the employee who has made the invention shall have the right to remuneration reflecting the importance of the patented invention, which remuneration shall be fixed by the court in the absence of agreement between the parties.....the said employee shall have a similar right if the invention is of very exceptional importance.”

It follows from the above that a worker is entitled to share in the financial rewards of his invention where the patent is granted to the employer. The remuneration payable is ideally to be agreed upon between the worker and the employer. In the absence of an agreement however the inventor worker can apply to either the high court or court of first instance to determine the amount due as compensation. This application is by a simple motion supported by an affidavit stating the facts upon which the claim is predicated.

There is clearly no basis to suggest that the proceedings should adopt the circuitous route of going through the conciliation procedure before the labour inspector as is the case with traditional labour actions. This is particularly obvious since the claim to remuneration is a right conferred by the Bangui treaty and not the labour code. The magistrate and high courts also have jurisdiction to deal with such applications pursuant to their powers to hear urgent applications in sections 15 and 18 respectively of the 2006 law on Judicial Organization.

A major notion of intellectual property law is the concept of a copy right. While patent protects scientific discoveries, copy rights are designed to protect works of the mind which are basically of literary and artistic character.¹¹⁰ Art 5 after noting that such works should be original, identify 12 types of works protected under this category viz: written works including computer programmes, lectures/sermons, musical works, dramatic works, works of fine arts, expressions of folklore etc. The principle for the ownership of these species of intellectual properties is similar to those for patents.

¹¹⁰ The protection from economic exploitation is for a lifetime. See Art 22

Introduction

Termination is in common parlance defined as the act of bringing to an end or coming to an end in space or time¹¹¹. When applied to the contract of employment, this definition will definitely cover the other ways by which contracts of employments are determined. This ordinary linguistic definition would encompass such notions like dismissal, retirement, resignation etc. This is so since both dismissals, retirements and resignations all have the effect of bringing the employment contract to an end. But should all these notions be conveniently conceptualized as termination as understood in strict labour law perspective?

The answer is of course certainly not! To suggest otherwise will led to conceptual confusion because termination and dismissal which are distinct theoretical concepts. Each carries its distinctive attributes in labour law. The conceptual differences between them invariably mean that the resulting incidences will vary according to whether a worker was terminated or dismissed from service.

That these ideas are not coterminous and cannot be employed interchangeably was affirmed by the Nigerian Supreme Court in *J. A. Irem v. Obubra District Council and Another*¹¹² where it was observed that dismissal carries infamy and deprives one of benefits while termination does not. Generally, dismissal is universally regarded as a radical option with immense potential to destroy the employee's chance of alternative employment and should not for this reason be resorted to lightly. The labour code's failure to specifically

¹¹¹ M.R. Freed Land *The Contract of Employment* Oxford; Claredon Press, 1976: 142.

¹¹² (1960) 5 FSC: 24.

recognise the clear differences between the two notions can at best be described as unfortunate.

Termination

Section 34(1) of the labour code refers to the termination of contracts of employment of unspecified duration. It asserts thus:

“A contract of employment of unspecified duration may be terminated at any time at the will of either party. Such termination shall be subject to the condition that previous notice is given by the party taking the initiative of terminating the contract. Notification of termination shall be made in writing to the other party and shall set out the reason for the termination. The notice period shall start to run from the date of such notification. It shall be subject to any condition precedent or condition subsequent. Under no circumstance may it be set off against the leave period of the worker.

Where the above obligations are not respected by one of the parties, no period of notice shall be enforceable on the other party. This provision shall be without prejudice to the right of the injured party to claim damages.”

It is perhaps necessary to commence the analysis of this provision by noting that the section has not defined termination. We shall in the absence of a definition in the labour code turn to academic writers for a definition of termination as understood in strict legal parlance. The concept has been defined as referring to the process by which a contract is put to an end in accordance with the pre-determined rules regulating the employment¹¹³. In situating this definition in our Cameroonian context, it must be observed that such rules are normally derived from the terms of the party's employment, the provisions of the labour code, other legislations and collective conventions where relevant.

With regards to section 34 of the labour code, it needs to be specifically noted that the first sentence apparently codifies the

¹¹³ M.R. Freedman *The Contract of Employment* Oxford; Clarendon Press, 1976:142.

common law principle that permits either party in a contract of service to terminate it at will. This freedom of either party to an employment to put an end to it was read into a similar provision in a previous labour code by the Supreme Court in *Ngo Minyemeck Catherine v COMACICO*¹¹⁴ when the Court held that an employer was legally at liberty to terminate a contract of employment.

Indeed, in yet another decision delivered a month later, the same court in *Mazioh Claude v S.E.A.C*¹¹⁵ affirmed the employer/worker's freedom to terminate a contract of employment at will. The Supreme Court in the *Mazioh Claude*'s case rejected the argument that the right to terminate can be taken away because of the illness of the worker. These decisions were clearly animated by the near universal philosophy of the *laissez-faire* notion of the freedom to contract as well as determine contracts of employment at will.

However, in spite of the fact that the sentence is declaratory of the common law notion of the freedom to terminate an employment contract, it will be hasty to suggest that this weakens the security of tenure of a worker in Cameroon. On a careful review of the current labour code, it is obvious that the right to terminate may not be abusively and negligently used against a worker. The Supreme Court had thus held that an employer who terminated his houseboy only because the employer had been appointed the GM of BICIC had acted wrongly.

Although the employer had the right to terminate, the Supreme Court held in *Jourdan Roger v Izoung Michel*¹¹⁶ that it could not be a good exercise of this right to recklessly terminate a worker who had served him as a houseboy well for over six years. The *Jourdan Roger* decision shows quite clearly that there is no such unlimited right in an employer to terminate a contract of employment for the fun of it. Quite clearly, the requirement of written notice in section 34 of the code which "shall set out reasons for the termination" provides protection against the abusive and capricious termination of a worker

¹¹⁴ Appeal No 25 of 21/3/1974.

¹¹⁵ Appeal No 45 of 25/4/1974.

¹¹⁶ Appeal No 25/4/1978.

by the employer. The sentence unambiguously assumes that termination must be for a valid reason.

In principle termination is the process whereby an employment is determined in accordance with the parties' agreement or at least what the law regards as their agreement. This principle is a product of the general rule that parties are bound by the terms of their employment which was broadly recognised in the Supreme Court Appeal No 202 of 16/5/1961. Thus, except where the terms were reached *ad terrorem* in breach of sections 1(1) and 23(1) of the labour code they must be respected.

In general, the contract of employment terminates when the obligations in the employment which are provided in the terms of the contract are fully performed. These obligations normally relate to the carrying out of a specific task or the performance of work for a certain duration of time. Whatever the reasons, it will be a breach of contract if the express provisions of section 34(1) of the code relating to written notice specifying the reasons for the termination is not given.

Besides, it is trite law that an employment contract may contain terms not expressly agreed upon. Certain notorious industrial practices and customs may get incorporated into an employee's employment terms. It was for this reason that the Supreme Court held in *B. N. C I v La Dame Bourlier*¹¹⁷ that the terms of a worker's leave could be derived from common commercial practice prevalent in that domain where the worker was engaged. Terms implied in this way cannot be considered unenforceable because the worker did not provide consideration for them. They are in fact to be construed as special terms which cannot be frustrated for lack of mutuality.

The Effect of Notice

The determination of a contract of employment by notice as has been observed earlier has been statutorily recognized by section 34(1) of the labour code. This provision calls for a few further comments.

¹¹⁷ Appeal No 202 of 16/5/1961.

The first observation worthy of further comment is the fact that section 34(1) did not address the specifics of the notice to be given in cases regulated by it. Are we, in the face of this apparent lacuna to assume that any notice will suffice to terminate an employment contract? The answer to this question is off-course most certainly not! Both plain reason and the spirit of section 34(3) of the code dictate the assumption that a notice to terminate must be precise.

This notice must as a rule specify the date which the notice takes effect or contain the means whereby the date of commencement can be positively ascertained. That this is so is demonstrated abundantly by the decision in *Morton Sundor Fabrics Ltd v Shew*¹¹⁸ that a general warning given to the worker that his service will not be required in some future date is not notice.

It does in fact appear apparent that the requirements of notice are stricter in Cameroon. This is so since under section 34(2) of the labour code the period of notice starts running from the date of notification of the worker/employer. It follows from this provision that notice that was written but not brought to the personal attention of the worker does not qualify as notice for the purpose of section 34. However, it is clear that such notice need not necessarily be served by a sheriff bailiff. Service of a warning by radio announcement calling back a worker who had abandoned service to come and take back her service or else she would be considered to have terminated her employment was in an obiter in *Hannah Nganje v University of Buea*¹¹⁹ regarded as regular.

However, it should be emphasised that such notice shall under no circumstances be subject to any condition (whether precedent or subsequent) nor may it be set up against the leave period of the worker. Although notice is generally a function of the party's agreement and largely dependent on seniority, its duration must not be shorter than those prescribed in ministerial order of the Minister of Labour and Social Insurance No. 15/MTPS/CJ of 26th March 1993.

¹¹⁸ (1966) 2 K.I.R p. 1

¹¹⁹ (Supra)

Under this order, the notice period is determined by the worker's occupational status as well as seniority in his work place. This order in specific terms prescribes from 15 days to a month (depending on the professional status of the staff) notice for a worker who has been in employment for between one month and a year of service, one to three months for workers who have put in from between one to five years of service and between two to four months for workers with over five years working experience.

Generally, notice operates to put the contract of employment at an end. But for notice to achieve this, it must be sufficient in law. Where therefore the parties have prescribed the length of notice in their contract of employment or the regulations have prescribed it as in above, the employment can only be validly terminated with notice strictly complying with the terms of the notice as agreed or as prescribed. This point was neatly captured in *N. Nso Richard v Parc Nationale De Genie Civil*¹²⁰ where the termination of the plaintiff's contract without notice was held to be in violation of section 34(1).

Certainly, and by simple extrapolation from section 34(1) of the Labour Code, a termination with notice which is only a single day short than what is either contractually or statutorily required is wrongful. Furthermore, the employer is by section 39(3) of the labour code as well as the reasoning in the Supreme Court decision in *Tagne Olivier v Tagne Jean Michel*¹²¹ bound to investigate and establish the reason given for both the termination and dismissal of a worker. It is not enough that the employer has indicated the reason(s) for the termination in the notice issued.

Another important point to note is the phrase "notification of termination shall be made in writingand shall set out reasons for the termination" in section 34(1). It is obvious from this phrase that the employer cannot rely on reasons either at the labour inspectorate or the trial which is different from those contained in the notice of termination. The Bamenda Court of Appeal decision in

¹²⁰ Suit No HCB/5.L/98-99.

¹²¹ Appeal No 68 of 30/5/1972.

Wirsky v Sodepa¹²² apparently holding that an employer can at the trial rely on a worker's previous misconducts found in the worker's file is unsound and at odds with the express provision of section 34(1) of the code under reference.

On the contrary, the correct interpretation of section 34(1) of the code is that an employer who knowingly allows a worker to work after the latter's misconduct can no longer rely on it as a reason for the termination. The employer's action in such a situation is considered as condonation of the worker's misconduct. Such condonation normally normalizes the employment relationship and estops either party to the employment from subsequently relying on it as a basis for its determination. To hold otherwise will do violence to section 34(1) of the Labour Code.

Sometimes the terms of employment alternatively provides for the payment of salary in lieu of notice. In practice, the circumspect employer would consider it managerially unwise to allow the worker to work during the period of notice. This approach to industrial relations is informed by the reasonable suspicion that the worker's fidelity which is vital for a rewarding working relationship becomes particularly suspect where the worker feels that the termination is punitive.

In this type of situations, contrary to the practice prevalent amongst employers, the appropriate thing is for the worker to be paid on the date the termination takes effect. A mere offer to pay the salary in lieu of notice at a future date is incompetent, as payment must be immediate. This principle was illustrated by Karibi Whyte JSC in *Chukwumah v Shell*¹²³ who rejected the idea that an employer's offer to pay a dismissed worker at some future date can be regarded the same as payment to satisfy the condition requiring two months' pay in substitution of notice in the appellant's contract. For similar reason, a worker who proposes to immediately leave his employment could be required to pay the employer salary in lieu of notice. Here also, immediate payment for instance in cash or by

¹²² Supra.

¹²³ Supra.

check is vital. An offer to pay is not the same thing as actual immediate payment.

The right to terminate an employment with valid notice is not however absolute even where there are credible reasons for doing so. The contract of employment of a worker who is also a worker's representative cannot be determined by notice without the authorisation of the labour inspector with jurisdiction in the place of the enterprise. Any such termination will be considered wrongful for violating section 130(1) of the Labour Code.

It was thus held in *SO DE PA Dumbu v Biebu Martin Nfang*¹²⁴ that the termination of the respondent who was a staff representative in the appellant's organization "required the authorisation of the labour inspector." The Court of Appeal Bamenda had no difficulty in affirming the decision of the trial court holding the appellant liable in wrongful dismissal. This decision is instructive for two important reasons. Firstly, the fact that the appellant employer got the authorisation of the labour inspector subsequent to the dismissal and the involvement of the worker in gross misconduct did not relieve the employer from scrupulously respecting the provision of section 130 of the code. Secondly and rather illuminatingly, Mbeng JCA made allusion to the existence of the remedy of reinstatement in the context of this provision when he criticised the employer for failing to reinstate the respondent.

The rules of natural justice cannot be evoked to vitiate the decision of the employer to terminate the employment where the requirement of notice as identified above has been complied with. Besides this being the effect of the freedom to terminate by either party in a contract of employment in section 34(1), the conclusion is aptly supported by the Supreme Court decision in *Osakwe v Nigerian Paper Mill*¹²⁵ that:

'since the relationship between the parties was one of master and servant what determines the wrongfulness or otherwise of the

¹²⁴ BCA/7L/2006 Unreported.

¹²⁵ (1998) 7 S C N J 223

plaintiff's dismissal is the contract of service not any notion of fair hearing''

However, once it is shown that the employer has disciplinary regulations or memorandum governing the worker's service, this must be scrupulously complied with. In such situations, the employer must further establish that the worker was giving the opportunity to avail himself of the protections in the regulation as was correctly noted in the Fomben Thomas's case¹²⁶.

¹²⁶ Supra.

Introduction

The law had long recognized the right of either party to a contract of employment to summarily determine it for misconduct regardless of what the other party wishes. Dismissal which is of great antiquity refers to the precipitate decision to put an end to employment for reasons of the misconduct of either party to the employment. Such conduct will normally relate to a refusal to perform a duty or obligation owed to the other under the employment.

Section 36(2) and 37(1) of the labour code are significant for encapsulating the concept of dismissal. The former makes reference to a contract of employment and asserts that “it may be terminated without notice in case of serious misconduct, subject to the findings of the competent court as regards the gravity of the misconduct.” From what has been noted earlier, although the legislator used the term termination, the reference to serious misconduct in section 36(2) of the code simply meant that the lawmaker had dismissal in contemplation.

The question that immediately comes to mind in our Cameroonian situation is what is the extent of misconduct that may justify a dismissal? Admittedly, this question is difficult to answer because neither the sections under reference nor any other provision has defined misconduct or dismissal. This lacuna shows the regrettably clumsy nature of the entire labour code which clumsiness is also reflected in sections 36(2) and 37(1). These provisions may be legitimately criticised for confusing termination and dismissal which are conceptually distinct notions carrying different consequences.

Dismissal which is tied to the fault of the worker is a radical option which because it carries both infamy and dishonour should not be resorted to lightly. The courts are as a matter of course inclined

to strictly construe dismissals since it ends up throwing the worker out of work and does so carrying his good name along as well. Based on precedent from the Supreme Court, *B E Fondjock JCA* held in the Bamenda Court of Appeal in *SO DE PA Dumbu v Biebu Martin Fang*¹²⁷ that the appreciation of the gravity of conduct for the purpose of determining a misconduct is at the discretion of each individual judge noting that “gravity is a function of each individual case” which “varies from case to case.”

With regards to the actual definition, the quality of conduct which would amount to a misconduct can be gleaned from the Supreme Court’s decision in *Arrete No 97/s* of 12th September 1985 holding that a serious misconduct must relate to an intentional act of the worker in the course of employment. The Supreme Court was quite categorical that this excluded what the court preferred to refer to as a professional error.

The Court’s view as expressed above is unfortunately not particularly helpful since it remains obviously difficult to say what “intentional act” as used in *Arrete No 97/s* means in relation to the various possibilities that can occur in employment. It is however safe to conclude from an earlier decision of the same Court in *Makoa Solomon*¹²⁸ that disobedience of a reasonable order by a worker ranks among one of the most serious intentional acts that should justify dismissal. The *Makoa* decision clearly suggests that the notion of intentional act of wrong doing by a worker (such as the disobedience of reasonable orders) conveys the idea of acting in a manner which is fundamentally inconsistent with the terms of the worker’s employment. This explains why the court itself made reference to the link between an intentional act and repudiation.

The exclusion of professional error from the definition of serious misconduct means that certain misconduct, though admittedly wrongful, cannot be good grounds for the dismissal of a worker’s employment. After a review of a variety of Supreme Court decisions on this point, the Court of Appeal in *SO DE PA Dumbu* case

¹²⁷ *BCA/7L/2006* Unreported.

¹²⁸ *Arret No 69* of 19th March, 1968

pointed out rather graphically the salient elements of a misconduct with sufficient gravity to justify a dismissal thus:

“Among the various definitions of gross/serious misconduct attempted by the Supreme Court, the one which to our mind comes close.....says that gross misconduct is intentional misconduct or negligent misconduct of an employee, which cause considerable loss (prejudice grave) to the employer”

It is apparent from the above dicta that not every misconduct would justify a dismissal under our law. The misconduct may for instance not be of sufficient gravity to warrant its characterisation as an intentional act instead of a professional error that was in *Arrete No 97/S* regarded as a mere negligent act. It was for this reason that the *SO DE PA Dumbu* case held that although a herdsman who flouted the instructions of his employers by taking cow from a different herd that was not meant for sale and selling them had committed a misconduct, this was not of sufficient gravity to justify his dismissal.

The employer’s failure to indicate the amount of loss caused meant in the opinion of the Court that “the misconduct slightly falls short of the Supreme Court standard.” This decision demonstrates rather interestingly that to qualify as misconduct sufficient to justify a dismissal, the prejudice caused to the service must be substantial.

Furthermore, it may well be that the misconduct does not directly relate to any term within the employment scope of the workers. The latter principle was succinctly illustrated in *Laws v London Chronicle (Indicators Newspapers) Ltd*¹²⁹. In this case the plaintiff an advert clerk had followed her immediate boss to the office of the MD of the company. After a rancorous quarrel between the MD and her immediate boss, the latter stormed out of the office. The plaintiff in apparent sympathy wanted to follow her immediate boss out of the MD’s office whereupon the MD ordered her to stay where she was. On being dismissed for refusing to obey the order to stay where she was, it was held that the dismissal was wrongful. She was employed as

¹²⁹ (1959) 2 All ER 285

an advert clerk and the order to stay in the MD's office did not relate to her employment functions as such.

It is always better and more rewarding to attempt a descriptive analysis of the notion of dismissal. We have for this purpose-categorized dismissal into what is now known in judicial parlance as dismissal for conduct incompatible with the continuance of employment and dismissal by operation of law.

Dismissal for Conduct Incompatible with Employment

A worker whose conduct is incompatible with a faithful discharge of his employment duties can be dismissed under sections 36(2) and 37(1) of the labour code. Conduct incompatible with employment will classically fall within the definition of what the Supreme Court regards as intentional acts amounting to serious misconduct in section 36(2) and 37(1) of the code. Although it will be impossible to exhaustively itemize the conducts considered incompatible with the worker's duties, such acts as wilful disobedience to lawful and reasonable orders, theft of employer's property, gross incompetence etc. has a general theme of incompatibility with employment underlying them. There are all inconsistent with the worker's employment responsibilities.

The underlying consideration for the application of this test is the effect of the purported conduct of the worker on the entire employment relationship. The principle informing this approach was graphically demonstrated in *Sinclair v Neighbour*¹³⁰ which was cited with approval in *Catholic Education Secretary V Atem Mary Musone*.¹³¹ In the former case, the manager of a betting shop had without his employer's permission borrowed money from the till for the purpose of gambling and was dismissed for this. On the argument that the worker was not dishonest because he had the intention of repaying the money, and did in fact repay the money the next day, it was held that his dismissal was justified. The decision was

¹³⁰ *Supra*.

¹³¹ Suit No CASWP/L.1/04-05.

grounded on the basis that his conduct was incompatible with the continuance of the employment relationship.

Seller LJ in addressing the plaintiff's argument identified the issue as relating to the question whether the "conduct was of such a type that was inconsistent in a grave way... incompatible with the employment in which he had been engaged as a manager." This foundational principle which in practice stresses honesty, trust and confidence in the discharge of a worker's employment obligations was followed by the Court of Appeal, Buea in *Catholic Education Secretary v Atem Mary Musuno*¹³². The Court of Appeal confirmed the decision of the trial court that a school head teacher who took money from school fees under her charge without the authorisation of her employers was correctly dismissed. It may be recalled that the trial court had accepted *Sinclair v Neighbour*¹³³ as expressing a principle of law which is applicable in the context of the Labour Code.

The same Appellate Division in Buea held in *Victor Oyebog v C.D.C*¹³⁴ that a worker who conducts himself in the course of employment in a dishonest and untrustworthy manner by stealing materials entrusted to him by his employers in Tiko to deliver in Kumba was legitimately dismissed. In confirming the decision of the trial court dismissing the worker's claim in wrongful termination, the Court of Appeal noted that the worker deserved his faith for "tampering with the consignment note by inserting therein quantities of materials as he thought fit." These decisions must be applauded as sound in principle because no business organization will function properly if the workers were dishonest, untrustworthy and undeserving of their employer's confidence.

However, for reasons of the security of employment and the general adverse social and political consequences of dismissal, Cameroonian courts have followed common law trends in insisting on a high burden of proof in dismissal cases. It is therefore not

¹³² Ibid.

¹³³ Supra

¹³⁴ Suit No CASWP/L.10/2004

simply enough for the employer to dismiss the worker on grounds of loss of confidence. That this is a clear principle which has been consistently followed by our courts was demonstrated by *Societe Shell Cameroon SA v V Kemayou Henri*¹³⁵ where the High Court, Court of Appeal and Supreme Court all held in favour of the worker who was sacked for what the employer simply characterised as the loss of confidence.

Apart from stating that the phrase “the loss of confidence” was a rather vague ground for dismissal, these courts rightly noted that the claim that the worker had caused the employer the loss of 19,000.000 francs had to be proved by the employer. The failure by the employer to prove the allegation was considered fatal to their case in all three courts.

Criminal Misconduct in Employment

It does happen sometimes that the misconduct of the worker which is considered as incompatible with his employment also constitutes a criminal offence. Where this is the case, it becomes imperative that the employer proves the misconduct of a worker forming the basis of his dismissal beyond reasonable doubts. This is a well-known rule of great antiquity in the English provinces of Cameroon and derives from section 135 of the Evidence Ordinance.

In the Victor Oyebug case, the Court of Appeal in Buea had no difficulty in holding that the burden was on the employer to prove their assertion of the criminal falsification of the consignment note by the worker beyond reasonable doubt. Clearly, on the authority of the dicta in Oyebug’s case, where fraud is an element in the allegation levied against a worker; its proof is not discharged by establishing a mere discrepancy, for example, in the worker’s account.

There must be evidence of a deliberate conduct which was meant to benefit the employee. The correctness of this proposition was confirmed in *Nkufutoh Tifu Michael v Kom Area Cooperative*

¹³⁵ Appeal No 79/S/04-05 of 12/5/2005.

Union Ltd¹³⁶ where a worker was terminated for allegedly misappropriating stocks belonging to the respondent. Although the evidence at the trial showed that an audit account had established a shortage, there was also evidence that these shortages were not caused by the appellant personally but rather by persons working under the appellant who was the cooperative's storekeeper.

A N Njamnsi had no difficulty on these facts in holding that the trial court was wrong in attributing the shortages to the appellant. The judge noted quite rightly that in situations such as this, it must be proved that "not merely are the items missing from the stock, but that they have, in fact, been misappropriated by the storekeeper or fraudulently converted to his own use." This decision must be applauded for the additional reason that the allegation was the subject of a preliminary enquiry which disclosed a no case against the appellant worker. The trial court's decision which was particularly offensive¹³⁷ must be further condemned for strangely attempting to make a staff vicariously liable for the crime of other workers contrary to section 74 of the penal code. The trial court insensitively struck a devastating blow on the security of employment in the country.

Justice Njamnsi's view in the case under reference is in tandem with those of the Nigerian Supreme Court in *Alraine Nig. Ltd v Echiet*¹³⁸. Here an employee who had submitted a voucher for workers' salaries in which he claimed 120 Naira instead of 12.00 Naira was dismissed for fraud. The employee at the trial explained the change as a mistake and claimed he had put the decimal point after instead of before 2 in the figures. The increase in the figures was attributed to negligence and the dismissal of the employee was accordingly reversed. *Alraine Nig Ltd V Echiet*¹³⁹ is broadly consistent with the Cameroonian Supreme Court decision in *Arrete No. 97/s of 12th September, 1985*.

¹³⁶ Suit No BCA/27L/80.

¹³⁷ For reasons already averted to.

¹³⁸ (1977) 1 N. M. L. R 413.

¹³⁹ Ibid.

Can a Single Misconduct Justify a Dismissal?

Can a solitary misconduct alleged to be incompatible with employment be justification for the dismissal of an employee? No straight answer is possible to this question as the issue will depend on the circumstances of each case. A single misconduct which strikes at the root of the employment such as theft as in Oyeboğ's case could correctly led to the dismissal of the worker's employment. It was thus categorically stated by B E Fondjock JCA in the SO DE PA Dumbu case that "we agree with counsel for the appellant that even a single act of serious/gross misconduct would warrant a summary dismissal." Justice Fondjock reasoned that "there need not be a multiplicity of acts" since in his appreciation of the law "one single act be it intentional or negligent" could be sufficient where it could ruin an enterprise or company or establishment.

For misconducts which do not go to the root of the employment, it was in Alraïne Nig Ltd case stated that it will be unfair even if correct to dismiss an employee for a trivial discrepancy even if it were tainted with fraud. This decision is instructive and inspirational as it also reflects the broad principle in the SO DE PA Dumbo case. Quite apart from its positive impact on security of service, it is sound for the additional reason that there are a variety of other forms of disciplinary measures open to the employer.

A related issue is that dealing with whether a misconduct which also amounts to a criminal offence must be heard and determined by a court before the employer can dismiss the worker. In elaborating on this question, it needs to be emphasised that Cameroonian law is radically different from Nigerian law on this issue. In Nigeria the issue was a constitutional one regulated by section 33(4) of the 1979 Constitution stating that wherever any person is charged with a criminal offence, he shall unless the charge is withdrawn be tried in a competent court.

There is no equivalent provision in Cameroon. On the contrary, section 39(2) of the labour code which governs this issue simply vests the competent labour court with the jurisdiction to determine the reasons given for the dismissal. Indeed, counsel's arguments in the

Victor Oyebug case that proof of a criminal assertion ought to be by a criminal trial and conviction was rejected by the court of appeal as untenable in the circumstances of section 39(2). The line of cases from Nigeria suggesting the contrary may in fact be indicative of the comparative strength of the security of service in Nigeria but are not part of Cameroonian labour law.

Disobedience of reasonable orders

A more fundamental way in which a worker's conduct may be thought to be incompatible with the continuance of employment is where the worker refuses to obey the reasonable orders of the employer. The Mokoia decision of the Supreme Court which is the locus classicus on this point has been followed in a long line of cases across the country. Justice Njie A. N excellently captures the position of the law in this province in the Buea Court of Appeal case of Catholic Education Secretary V Ndip Aaron Oben¹⁴⁰ thus:

“There is no doubt whatsoever from the records of proceedings that the respondent a worker was in July 1997 transferred by the appellants his employers from Bojongo to Fontem and the respondent never reported for duty in Fontem. In this regard I hold the same view as the Bamenda Court of Appeal in Education Board of Baptist Convention v Robinson Fell Fominyen (Suit No BCA/ 31/ 83 that a refusal to go on transfers tantamount to a misconduct.”

The fact that the worker had requested and collected money for transport to travel to his new station and partial salary arrears owed him without going to his new station was held to amount to a disobedience justifying his dismissal. Justice Njie was particularly instructive on what could be defined as a just cause justifying a worker's refusal to go on transfer. In a particularly illuminating statement the judge stated the issue thus¹⁴¹:

¹⁴⁰ Supra.

¹⁴¹ Supra.

“From what I have said above, I found the respondent’s refusal to go on transfer because he was owed two months’ salary and he was not given a simple guarantee for the payment of these salaries was not a just cause and consequently he ought to have been dismissed...”

This decision is well founded for two reasons. Firstly, the Administrative Tribunal of the International Labour Organisation had held in *In Re Duran No 3*¹⁴² that “it is an elementary principle of the law of contract that if one party clearly and definitely refuses to honour his or her obligations, the other party is entitled to rescind the contract.” The tribunal made reference to the refusal of Ms Duran to go on transfer and observed that this principle remains the same in employment noting that “it does not matter whether or not any of the rules say so in many words.” In the particular situation under the labour code, the decision is unimpeachable for the additional reason that the worker had engaged the procedure for the payment of outstanding wages as he was entitled to do under the labour code.

Secondly, a situation where workers do just what they please and refuse to obey the reasonable instructions of the employer can only move towards anarchy which is patently incompatible with the employment contract. In *Sule v. Nigeria Cotton Board*¹⁴³ the Nigerian Supreme court disapproved of the disobedience of lawful orders from any worker high or low, big or small. The court added that such conduct normally and usually attracts the penalty of summary dismissal as disobedience ranks as one of the worst form of misconduct in employment.

However, the disobedience of an order that is either unreasonable or entirely unrelated to a worker’s scope of employment is not fatal to the continuance of employment. It is equally true that where obeying an order will expose the worker to unacceptable levels of risk, the worker is not obliged to respect it. It was thus held in the *Re Duran 3* that “a staff member is not obliged

¹⁴² Judgment No 543 of 50th Ordinary Session March 1983.

¹⁴³ (1985) 2 N.W.L.R 17

to go to a place where she might have to run unacceptable risks of injury or ill health.” The tribunal in *Re Duran 3* was however quick to add that this principle should not be construed as giving the worker the power to veto her transfer.

The worker is under no contractual obligation to co-operate with his employer to achieve good results in his organization if such co-operation will require him to do acts outside the contemplated terms of employment. The worker’s responsibility is to do what he has undertaken by his employment contract to do. The difficult question is that related to the worker’s inability to perform the duty undertaken under the employment as a result of sickness. The *Re Duran 3* made reference to the tribunal’s judgment involving the same complainant that a refusal to go on transfer on the basis of ill health is not sustainable. Quite clearly a worker who is so sick that he can no longer work for his employer may be terminated. It was for this reason that the claim by the plaintiff worker in *Catholic Education Secretary v Ndip Aaron Oben*¹⁴⁴ that he could not go on transfer because of ill health did not avail him anything. Such matters as inability to go on transfer on health grounds are to be treated on the basis of negotiations between the employer and worker on compassionate grounds.

Where however the parties to a contract of employment have clearly agreed that a particular disciplinary procedure be followed before dismissal it must be complied with. Such an agreement may take any variety of forms. The agreement which may be deduced from the employment contract or the rule book of the enterprise becomes enforceable regardless of the fact that the other party is guilty of misconduct.

The worker’s misconduct (no matter how grave) does not ordinarily change the party’s terms of employment on the disciplinary procedure to be followed. This rule was aptly illustrated in *Fomben Thomas T v Societe Nationale De Eaux Du Cameroon (S N E C)*¹⁴⁵. The defendant employer the sole water company in Cameroon had a

¹⁴⁴ *Supra*.

¹⁴⁵ HCF/L.49/99-2000

memorandum setting out the disciplinary procedure of the company. The plaintiff challenged his termination on grounds that the employer did not observe the formalities prescribed in the disciplinary memorandum. On these facts, the Buea High Court held thus¹⁴⁶:

“There is therefore no doubt the termination of the plaintiff was wrongful and malicious. The procedure was not complied with by the defendants who are the ones who came out with Note No 0035/GPA of the 21/02/89 instituting the disciplinary council. The plaintiff is therefore entitled to damages”

It is clear that an employer who terminates or dismisses a worker must in addition to proving the reasons stated in the notice also prove that available disciplinary procedures were strictly followed. Where there is provision to appear before a disciplinary board, appearance at the board must be done in a manner consistent with the basic principles of fair hearing. Noncompliance with the rules of fair hearing would be fatal since it will render the resultant dismissal invalid.

The Court of Appeal Bamenda in *Ngwang Geoffrey v Tangibot*¹⁴⁷ held that a disciplinary board constituted to try a worker for shortages in the weighing of coffee was done in breach of the natural law rule that a party should not be a judge in his own case. The court declared the worker’s removal based on the recommendation of the board wrongful because the director who accused the worker of the shortages was himself a member of the board. This decision has to be saluted for its consistency with worldwide trends on fairness.

Dismissal for Sundry Reasons

The oil boom of the seventies and eighties resulted in massive expansions in the industrial sector and substantial growth in the development of businesses in the country. This had a direct effect on employment as more jobs were created. However, Cameroon could

¹⁴⁶ *ibid*

¹⁴⁷ Suit No BCA/L.6/75 Unreported.

not be insulated from the depressions emanating from the capitalist centres of Western Europe. This and subsequent depressions led to a slump which started a crisis that has resulted in the closure of very many companies for economic reasons. Companies that survived had to restructure and reduce staff citing the economic down turn as the basis of their actions.

Dismissal for Economic Reasons

By section 40(2) of the Labour Code a dismissal for economic reasons occurs where the employer “for one or more reasons not inherent in the person of the worker” relieves the worker of his service. The discharge must necessarily result “from an abolition or transformation of posts or an amendment to the contract of employment consequent on economic difficulties, technological changes, or internal reorganisation.”

This type of dismissal is similar to that under the common law where employment is said to be determined by operation of law. The contract of employment ends simply because the law regards the contract as determined. This situation is distinguished from the normal circumstances by which employment are determined either by effluxion of time for contracts of fixed period, or by notice in employment of an unspecified duration. The termination of the employment under this general rubric is ascribed to circumstances beyond the control of either the employer or the worker.

Section 40(3), 40(4) and 40(6) of the Labour Code provides greater security to workers than what obtains under the common law. Dismissal for economic reasons would pursuant to the above provisions only be undertaken if the employer in consultation with the staff representative and the relevant labour inspector attempted to save the worker’s employments. It is incumbent on the employer to show that he tried such possibilities as “reduction of working hours, shift work, part time work,” including lay-offs and the review of allowances and wage cuts before the termination of the workers.

Where in spite of these, it is still necessary to dismiss, section 40(6) requires that the employer’s criteria for dismissal be submitted

to the staff representative for the latter's written opinion on the measures adopted. Under the same proviso, the employer's dismissal must be based on a consideration of "professional proficiency, seniority in the undertaking and the family responsibility of workers. This provision is unlike under English law where the rule is last in first out. Section 40(6) prioritises professional proficiency.

An analogous issue to be considered is the effect of incapacity resulting from the illness of a worker. While the death of either party to an employment puts an end to the employment, the same principle cannot be applicable in the case of the ill health of a worker. Incapacity due to sickness does not have a blanket effect of frustrating the employment. The effect of such incapacity depends to a large extent on the duration of the employment.

The employment of an employee engaged for a short term to perform a specific assignment could be determined by frustration under the principle in *Pousard v Spiers*¹⁴⁸ if he is incapacitated by either illness or any other phenomenon that makes it impossible to carry out his obligations under the contract. It was thus in this case held that the illness of the plaintiff which prevented her from performing a singing role in an opera for which she was engaged had frustrated the employment.

The situation with contracts of unspecified duration which potentially could last till the retirement of the worker is treated differently. Although each case will depend on its peculiar facts, section 89(2) (a) and (b) of the labour code has established the various possible principles to deal with the issue. Under these provisions, it is tacitly recognized that absence from employment due to industrial accident, occupational disease and illness certified by a medical practitioner do not rupture the employment relationship. Subsection 3(b) of section 89 of the code further makes the issue clearer by stating that absence from work as a result of an illness lasting for periods not exceeding six months could still leave the employment subsisting.

¹⁴⁸ *Supra*.

Absences from work lasting for more than six months stand on a different footing. Where there is a term of either the contract or a relevant collective agreement supporting it, the employer will be in breach of contract if he dismisses a worker who stays away as a result of illness for more than six months. Where there isn't one, the employer will perfectly be at liberty to terminate the contract of a worker who becomes incapable of working because of illness. In *Catholic Education Secretary v Ndip Aaron*¹⁴⁹ the claim by the worker that he could not go on transfer because of illness was regarded as idle. The parties may in fact agree on issues touching on absences from work in their contract or it may be regulated by a term from a collective agreement incorporated into the employment.

Dismissal for Trade Union Activities

Most legal systems have developed some form of protection against termination from employment for trade union activities. This is a salutary practice since an employee's union activities could potentially cause a clash between him and his employer. The law in many countries have rightly recognized that trade union activities may become the underlying reason for the employer's decision to rid himself of a troublesome union activist even though the employer may purport to base his action on other grounds.

The Cameroonian response and basis for the protection against harassment for union membership and activities are found in the 1996 Constitution as amended and the Labour Code. The preamble of the constitution which must be read alongside Article 65 of the Constitution provides an impregnable justiciable protection against abuses for union membership. This preambular provision confers on every worker and employer the freedom of "association, and of trade unionism."

The strength of this protection is further emphasised by the same preambular sentence which positively asserts that "the right to strike shall be guaranteed under the condition fixed by law." It is only a

¹⁴⁹ Supra

cowardly judge not deserving of his oath that will refuse to act against an employer who in violation of this powerful protection terminates the employment of a worker as punishment for his union activities.

Furthermore, section 4 of the labour code compliments the constitutional provision above. After noting that all workers and employers shall have the right to join the union or association of their choice, in their occupation, section 4(2) of the code goes further to expressly protect the worker from:

“any acts of anti-union discrimination in respect of their employment; any practice tending to make their employment subject to their membership or non-membership in a trade union; to cause their dismissal or other prejudice by reason of union membership or non-membership or participation in union activities.”

The code leaves no room for equivocation as section 4(3) categorically describes “any act contrary to the provision of this section” as “null and void.” It goes without saying that any dismissal, punitive transfer, demotion, deduction of salary etc. as a consequence of a worker’s membership of a trade union is absolutely ineffective. A labour court can for this reason easily order the reinstatement of any worker punitively dismissed for his union membership. This is in fact one of the rare occasions that an order for the reinstatement of a terminated staff can be made in our country. Any demotion, transfer or salary deduction can for the same reason be reversed by a labour court under the threat of punishment for contempt of court against a recalcitrant employer.

However, it has to be noted that a threat to terminate an employee’s employment remains only a threat and does not without more amount to a wrongful dismissal of the contract of employment 181. Nor in fact, does it amount to anything.

Constructive Dismissal

Constructive dismissal occurs where the employer acts in a way that demonstrates that the latter no longer desires to be bound by the terms of the employment. Constructive dismissal may take a variety of forms including for instance situations where the worker was

pressed to take dangerous risks etc. The point about constructive dismissal is that the employer becomes liable even where the worker resigns or abandons service because of the actions of the employer.

A classical example of constructive dismissal was presented in *Assurances Des Provinces Reunis v Tiogum David*¹⁵⁰. In this case the employer requested the worker who was based in Bamenda to travel to Douala and sort out an issue concerning him. Although the worker in compliance with this instruction made four trips to Douala, he was not attended to by the employer. In spite of this, the employer stopped the worker's salary and barred him from accessing his office in Bamenda.

Faced with these circumstances, the worker left the employment and sued his employer for wrongful dismissal. The Court of Appeal on these facts held that the worker had been dismissed noting that:

.”.....where an employer by such conduct forces his employee to abandon his service, the employer has terminated the contract of employment”

Jani JCA supported this decision with the Supreme Court judgement¹⁵¹ cited and relied upon by Roger Doublier's *Manuel du Droit Travail du Cameroun*.

¹⁵⁰ *Supra*.

¹⁵¹ Supreme Court decision delivered on the 15th December, 1964.

Chapter 8

Remedies for Wrongful Determination of Employment

Introduction

The wrongful determination of the employment of a worker is a wrong for which the law provides a remedy. It cannot be expected to be otherwise as the right to work would otherwise be toyed with by employers. Because the protection of the worker is for this reason a matter of utmost concern, the Labour Code has set out a variety of safeguards to protect the worker from being wrongfully excluded from work.

This chapter deals with a discussion of the various remedies open to an employee whose employment has been wrongly determined. Ordinarily, the philosophy regulating the court's response to a wrongful determination of employment contract is discerned in Lord Cain's decision in *Doherty v Alman*¹⁵². Under it, the dominant consideration is the issue of whether the remedy can sufficiently recompense the injury. However, unlike under the common law where the idea is to sufficiently recompense the worker either by damages or with an order of specific reinstatement in appropriate circumstances, the Labour Code is near silent on the latter. It will therefore be necessary to discuss the remedies for the wrongful determination of employment in the context of the Labour Code.

Damages

By section 39(1) of the Labour Code "every wrongful termination of a contract of employment may entail damages." This provision makes damages the principal relief for the wrongful determination of employment in Cameroon. What does 'damages' as used here mean? Although the Labour Code has not defined damages, it refers to the

¹⁵² (1878) APP CAS 709

pecuniary satisfaction awarded by a judge in a civil action for a wrong suffered by a plaintiff who in labour law could either be the worker or employer.¹⁵³ The award of damages is under the labour dispensation in Cameroon regulated by the principles defined in section 39(4) of the labour code. The provision states thus:

“Damages shall be assessed with due regard to all factors indicating that prejudice has been caused and all factors determining the extent of such prejudice, and particular with due regard

- (a) Where the worker is responsible, to his qualification and post;
- (b) Where the employer is responsible, to the type of employment, the worker’s seniority with the employer, his age and any vested right.

However, the damages shall not be less than three months’ salary or more than one month’s salary per year of service in the enterprise.”

It is necessary to make a few preliminary comments on the claim to damages as it relates to this provision dealing with the substantive issue of damages in employment law. Firstly, to succeed in a claim for damages, the worker or employer as the case may be, must have presented the claim at the labour inspectorate during the conciliation process. The failure to claim any head of damages before the labour inspector is fatal for violating sections 139-140 of the Labour Code. Indeed, the Supreme Court decision in *Dandji Marc v College du Progres*¹⁵⁴ had firmly established the principle that a party cannot claim at the court what he failed to claim during the conciliation process before the labour inspector.

The usual practice where a new item of claim emerges in the court is to remit the claim back to the labour inspector for an amended statement of non-conciliation to be prepared incorporating the unclaimed item of damages. However, some have argued from what appears to be an academic dimension that it could in the former West Cameroon be permissible for the labour court itself to amend

¹⁵³ Mozley & Whitey Law Dictionary (London) 1977: 94.

¹⁵⁴ Appeal No 44 of 4/2/1969.

the claim and include the unclaimed item for determination. This argument proceeds from the view that the statement of non-conciliation was in *Moses Payne v Ken Enroy*¹⁵⁵ construed by the Bamenda Court of Appeal as amounting to the pleadings in a labour matter.

According to this view, it is elementary that every court should have the inherent jurisdiction to amend the pleadings before it. The approach of sending the case back to the labour inspector is from the implication of this view based on the interpretation of the *Ken En Roy* case harsh and unsustainable. A labour court that situates the code in the common law context in the same way that the courts in the former East Cameroon construe the code in the context of the civil code will quite easily amend the statement of non-conciliation.

Basis of assessment of damages

Damages in cases of wrongful determination of employment under section 34(1) of the code is assessed “with due regard to all factors indicating that prejudice has been caused.”¹⁵⁶ The first issue to be determined is what does this statement mean? Does the statement imply that the courts have the absolute discretion to assess damages in labour matters?

While it will at first glance appear that the phrase should influence the determination of damages in labour cases, it is obvious that this is no longer the case. Though prior to the enactment of the current code in 1992, and under the 1972 Labour Code the issue of damages were left at large for the determination of the courts, rather

¹⁵⁵ *Supra*.

¹⁵⁶ In Nigeria for instance the idea is to award damages in a manner that will as nearly as possible put the innocent party in the same position in so far as money can do it as if his employment had not been determined. This principle which was enunciation by the Supreme Court in *Nigeria Produce Marketing Boards v. Adewunmi* is no part of Cameroonian law. It was said that in a claim for damages for wrongful dismissal, the measure of damages is *prima-facie* the amount that the plaintiff would have earned had the employment continued according to contract.

regrettably most judges abused their discretionary power by making corrupt and exaggerated awards.

It was in fact common to find a dismissed worker awarded damages of sums that he could never have earned even if he had remained in employment till retirement.¹⁵⁷ This practice not only became a major disincentive to the evolution of a good work culture in the country, it also scared foreign investors who pressed for the amendment of the labour code to curb the excesses associated with the provision.

The statement which suggests that regards ought to be had to all circumstances showing that prejudice has been caused before damages are assessed is of limited value in the assessment of damages under the 1992 Labour Code. Issues of the qualification, position, age etc. of the worker are no longer as important in the determination of damages under the present dispensation as there were before 1992. As will be seen later, the significance of these factors in the assessment of compensation is now relevant only in employments lasting from 1-2 years. The phrase is therefore a minute exception to the principle in section 39(4) of the code completely taking away the labour courts discretion in assessing damages in employment law.

The rigid rule for the assessment of damages prescribed by section 39(4) of the Labour Code is now an inflexible principle of the law which must be followed. This explains why M A Mbeng JCA castigated the trial court's decision in *Union Camerounaise De Brasseries v Baiye Afue Joseph*¹⁵⁸ for holding that the assessment of general damages in labour matters was based on the discretion of the court. In his judgment M A Mbeng JCA regretted the trial court's statement that:

“It is true that plaintiff has suffered physical and moral deprivation. As head of a family of 12 and old parents to cater for, this wrongful termination caused him hardships and I here award him the sum of 10,000.000 FCFA” noting with respect to the trial

¹⁵⁷ See generally *Pecten Cameroon Co v Agbomah Tataw James Suit No CASWP/L9/90* Unreported.

¹⁵⁸ *Suit No CASWP/L.17/2000* Unreported.

judge that this was a mis-statement of the law contrary to the provision of section 39(4) of the labour code. The statement of M A Mbeng JCA in this case shows clearly that such factors like age, sufferings etc. are completely irrelevant in the assessment of general damages in labour matters under the present dispensation.

However, the issue of discretion would be applied in the assessment of damages for workers who have worked for between one to two years for an employer. In this situation, the labour court could undoubtedly exercise its discretion to award either three months' salary or one month salary per year of service in accordance with the penultimate sentence in section 39(4) of the code. The award of 140,000 FCFA representing three months' salary for a worker who had worked for only one year was affirmed by the Court of Appeal in the Ebegi Patrick Agi¹⁵⁹ case on the basis of the factors in the concluding sentence of section 39(4).

Assessment of Damages in Labour Matters Standard Practice

The 1992 amendment revolutionised the law in the domain of damages for dismissal. It introduced the last sentence to section 39(4) of the labour code limiting the amount of damages to not "less than three month's salary or more than one month salary per year of service." This statement which is plain enough should not realistically allow for any interpretational difficulties. It was interpreted by A M Epuli JSC in the Supreme Court decision in *University of Buea v Mbua Teke*¹⁶⁰ where the erudite Justice construed the provision thus¹⁶¹:

"As for general damages the law is clear that they are calculated by awarding one month salary for each year of service. The plaintiff was employed by the defendant on the 1/11/94. By the time he retired in 1999 he had put in five years of service for the defendant. By the time he left the service of the defendant he earned 88.950

¹⁵⁹ Suit No CASWP/L.14/2000 Unreported.

¹⁶⁰ Appeal No 16/S/02-03 of 21/ 5/2002 Unreported.

¹⁶¹ Ibid.

francs per month. When multiplied by five years of service that gives the sum of 444.750 francs CFA as general damages”

There obviously can no longer be any basis for a court to disregard this clear and stiff principle for calculating general damages in labour law in the face of this lucid statement of the law.

Certainly, it is from the above dicta strange that the court of appeal in the Ken Elnroy case awarded general damages for inconvenience and as punishment of the employer for the refusal to pay the worker as directed by a senior government official.

Even under Anglo Nigerian law, the loss of reputation or injury to a worker’s feeling cannot be a yardstick for the assessment of damages in employment cases. Under the present dispensation, good practice will dictate that the courts specify the basis for the award of general damages and in so doing demonstrate that there is compliance with the express provision of section 39(4) of the labour code. To deal with the issue from a completely common law perspective as Justice Bawak did in *Pamol Plantations Ltd v William Nango Kimbeng*¹⁶² is certainly ill-advised. The learned justice had approached the issue of damages for dismissal thus:

“The respondent claimed the sum of 52,013539 francs general damages. The trial court awarded 20,000.000 FCFA under that head. The question is, is that award outlandish or excessive? The statement of the general rule from which one must always start resolving a problem as to measure of damageshas its origin in the speech of Lord Blackburn in *Livingstone v Rawyards Coal Co* (1880) 5 App Cas 25, 29.”

Identifying the rule as requiring the payment of money that will put the injured party in the position that he would have been if he had not sustained the injury, Bawak JCA as he then was held that 20,000.000 FCFA was not excessive.

This decision is interesting. It could at first sight be criticised as a deliberate smokescreen to disguise an unacceptable mis-statement of the law contrary to section 39(4) of the Labour Code. However, a more nuanced reading of the judgement will appear to suggest that

¹⁶² supra

the court was dealing with what Bawak JCA himself characterised as an action “based on a breach of contract by the appellant for failing to pay gratuity benefits rightly due to the appellant.”

Seen from this reflective dimension, a labour court should be capable of dealing with such an auxiliary breach since it falls within its obvious jurisdiction to deal with wages payable under a contract of employment under section 61 of the Labour Code. The problem is however the very difficult one of determining whether the court should treat the breach as attracting damages assessed on the basis of ordinary common law principles as done in this case. It does appear from the spirit of the Labour Code that the better view is that it should not be so dealt with¹⁶³. The court should have limited itself to granting the payment of the gratuity with interest calculated on the basis of the percentage specified by the Labour Code.

Special Damages

Normally, damages may be classified into the two broad headings of general and special damages. In labour actions, the former relates to damages accessed as stated in the preceding discussion while the latter basically reflects compensation for actual loss suffered. Although it will be difficult to anticipate and comprehensively itemise such losses, these invariably include loss of earnings and all incidental benefits that had become due. The dismissed worker is definitely entitled to claim damages for the benefits incidental to his employment which had become due at the time of termination or dismissal.

It is however important to note that the awards of special damages are based on the principle (even in labour actions) that such special damages must be pleaded and proved strictly. Bawak JCA

¹⁶³ This view is healthier given the history of section 39(4) of the code. The legislator would most certainly not have intended to introduce two principles for calculating general damages in wrongful dismissal cases. Besides, it is clearly unlikely that the code would have introduced common law rule for calculating damages in this provision when this was precisely the evil that the statement was meant to avoid.

pointed the only difference in labour action in the Pamol Plantation Ltd case as being the minor one that the pleading is contained in the statement of non-conciliation. In the Pamol Plantation Ltd case under reference, the court awarded the plaintiff worker his unpaid pension and gratuity which had accrued as special damages.

By and large, once any due deriving from the worker's employment had become accrued they should be awardable as special damages. There is therefore no hard and fast rule so long as the item claimed has become due from the employment. Usually, special damages will include rent allowance, leave claim, salary arrears, and irregular deductions from worker's pay of all types, post allowances, reclassification payments etc.

It is necessary to stress here that special damages in the main refer to actual loss suffered and not losses in futuro. The Supreme Court had in the *University of Buea v Mbua Teke*¹⁶⁴ case noted that salary for a period that the worker would have continued to work had he not been forced on retirement had not become due. Although the court did so for the purpose of applying the principle for the grant of orders of provisional execution, it is plain that the same reasoning will apply for the purpose of accessing special damages.

Njie JCA had in *Lay Private Education v Egege Patrick Agi*¹⁶⁵ for the same reason reversed the trial court award of special damages for salary that would have been earned had the worker not been wrongly terminated. The judge who incidentally¹⁶⁶ raised this issue suo moto stated the position thus:

“The respondent herein did no work and rendered no services for the appellants between November 1997 and August 1998.....The question is where is the legal basis for awarding the sum of 360,000 FCFA to the respondent? I am unable to find any basis for such an award. I hold that the award was illegal and it is consequently set aside”

¹⁶⁴ Supra.

¹⁶⁵ Supra.

¹⁶⁶ He was correct to raise the issue suo-moto. However a court that raises a point of law suo-moto must give the parties the opportunity to address it on the issue so raised otherwise the decision would be set aside on appeal.

This decision was rationalised rightly in our opinion on the basis that the trial court had found the termination wrongful and awarded the worker his due. This due in the words of the appellate judge included “damages for wrongful termination the only relief permitted by section 39 as read with section 38 of the labour code.” To make another award for future pay would clearly have offended the rule against double jeopardy.

However, special damages would in spite of what has been said above include payment for a period for which a worker was illegally suspended from work by the employer. A suspension for a period more than the statutorily prescribed eight days in the labour code is clearly illegal except where the worker was under physical detention during the period. It is for this reason that it was held in *Nkufutoh Tifu Michael v Kom Area Co-Op Union Ltd*¹⁶⁷ that the worker who was suspended for more than eight days was entitled to his salary for the period of the suspension as an item of special damages. The employer’s action in suspending the employee who was granted bail pending the investigation by the police of the case brought against him by his employer was described in this case as illegal.

Severance Pay

Reference must be made to the fact that severance pay and the payment of salary of a worker who has been dismissed after being transferred to work outside his usual residence are part of special damages. They are in spite of this treated rather differently. Section 37(1) of the labour code mandatorily requires an employer to pay a wrongfully dismissed worker engaged under a contract of unspecified duration severance pay on the determination of the employment. However, to be entitled, such a worker must have put in at least two years of successive service with the employer. In calculating tenure under this order, the employer must take account of paid leave,

¹⁶⁷ Suit No BCA/27L/80

permitted periods of unpaid leave, periods when the employment was suspended, periods of training/internship¹⁶⁸.

Severance pay is calculated on the basis of Order No 016 of 26 May 1993. This order is a ministerial text of the Minister of Labour and Social Insurance. Severance pay under this order is calculated as an average percentage of the workers monthly pay for the last 12 months preceding dismissal. The percentages are determined according to the length of service thus:

Employment from 1 to 10 years: 20%

Employment from 11 to 15 years: 25%.

Employment from 16 to 20 years: 35%

Employment from 21 years and above: 40%.

Workers who are employed and taken to work outside their work place or where they are resident stand on a slightly different footing. Apart from the fact that they are entitled to severance pay, employers are by sections 94 (4) of the labour code obliged to repatriate workers who were terminated while working in a place outside their usual employment back to their usual place of residence. An employer who fails to repatriate a worker back to his place of residence shall be bound to pay such a worker a monthly allowance equal to his salary.

This allowance which is practically a salary in disguise must be paid to the worker for the period the worker remains at the town where he had worked before his termination waiting to be transferred back to his usual residence. Where the employer fails to do so, the worker can claim this as special damages. However, since by subsection 5 of section 74, the worker's claim to the payment of repatriation transport is barred after three years, it follows naturally that the employer's obligation to pay the allowance cannot extend beyond three years either.

¹⁶⁸ See Nyumwih Anih Njomo (2007) "Compensation For Wrongful Termination of the Labour Contract in Cameroon" Unpublished Thesis for the LL.B, University of Buca: 57-58.

Where is the worker's place of residence for the purpose of the application of this principle? The courts have tended to define residence for the purpose of the labour code as synonymous with the place where the worker habitually lives. It was for this reason expressly held in the *Societe Activida Assurances v Fotse Marguerite*¹⁶⁹ that residence as used above refers to where the worker is domiciled. Although the issue of residence was raised in *Societe Activida Assurances v Fotse Marguerite*¹⁷⁰ for the purpose of the determination of jurisdiction under section 132 of the labour code, this case nevertheless throws light on the general concept of residence in labour law.

Fonkwe JCA as he then was had after a very extensive review of the law in this domain taken the view that residence in the context of the spirit of the labour code is consistent with domicile. From a careful reading of this decision, it is apparent that the Court of Appeal is of the firm view that a worker is resident not where he has been transferred to work but where he is domiciled.

Statutory Limitation

Although neither party to a ruptured employment is expected to mitigate its loss¹⁷¹, the terminated worker must take steps to recover all wages due from the employment without delay. A worker fails to heed this advice at his own peril because section 74(1) of the code states that all actions for the "recovery of wages shall be barred by limitation after three years." The use of "shall" above is instructive because it shows that the provision is a mandatory one demanding scrupulous compliance.

What then are wages which must be recovered in terms of this provision? The answer to this question may be gleaned from the

¹⁶⁹ CASWP/L.11/2001 unreported.

¹⁷⁰ CASWP/L.11/2001 unreported.

¹⁷¹ See for instance *Wenegieme v Boot Chemist Nig Ltd* (1976) N.L.R 224. This case which places a duty on an innocent party who has been wrongfully dismissed to mitigate his loss is not applicable in Cameroon because section 39(4) of the labour code has made the duty to mitigate loss irrelevant.

second sentence of section 74(1) of the code itself. Wages would following this sentence include “any compensation due for breach of contract of employment.” It seems obvious therefore that wages are for the purpose of limitation defined by reference to compensation due from employment. The term has a rather elastic connotation.

The expansive character of the notion of wages is further confirmed by the definition of wages in section 61(1) of the code that:

“In this law, “wages” means remuneration or earnings, however designated or calculated, capable of being evaluated in terms of money and fixed by mutual agreement or by the provisions of regulations or collective agreements which are payable by virtue of a contract of employment by an employer to a worker for the work done or to be done or for services rendered or to be rendered.”

Based on this expansive definition, it is clear that all sums and payment that can be legitimately connected to a worker’s employment fall within the definition of wages for the purpose of the labour code. That wage is not limited to the traditional notion of salary is supported by *Pamol Plantations Ltd v William Nango Kimbeng*¹⁷² where Bawak JCA held that a worker’s gratuity resulting from his contribution to the company’s pension scheme was a wage. It is near impossible to exclude an item of claim which has financial incidents from the definition of wages.

Time starts running for the purpose of limitation from the date the claim becomes due¹⁷³ and not on the date of termination or dismissal as it is sometimes erroneously thought. However, section 74(2) of the labour code has indicated the conditions that will stop time from running against the worker. Time shall under this proviso be frozen where the worker makes a written claim for the wage before the labour inspector, or in the case of the making up of accounts. It will also stop running where there has been an acknowledgment of the debt due the worker or where there is an unexpired or pending summons in respect of the claim.

¹⁷² *Supra*.

¹⁷³ Section 74(2) of the Labour Code

It must be observed that only the occurrence of the conditions enumerated will suspend time from running against the worker. There is no basis to introduce new elements outside those enumerated by section 74(2) herein. This point was neatly illustrated in *Cameroon Development Corporation v Elakie Ngolo Emmanuel*¹⁷⁴. At the trial High Court the respondent claimed for general and special damages but this was opposed on grounds that it had become statute barred having been brought three years after his retirement. On the respondent's argument that time had stopped running during the time of negotiation of the matter at the grievance commission set up by the employer the trial high court held thus:

"The question then is when a corporation has set up a procedure for settling and resolving disputes and engages that procedure in a particular case, can that aggrieved worker at the same time that the grievance procedure is looking in the matter go up to the labour inspector to lodge a complaint? ... Even though the labour code has not provided for this situation common sense and practice dictates that at that point in time, the time element under section 74 (1) and (2) of the labour code is affected by the negotiation"

On appeal Mbeng JCA castigated the lower court's decision for introducing such extraneous elements as common sense and fairness. Noting that section 74(2) is exhaustive, Mbeng JCA concluded that had the legislator "wanted that settlement or negotiation be one of those conditions he could clearly have said so."

The Court of Appeal in upholding the appeal was categorical that "having filed his claim more than three years after the said claim was due; the action of the respondent was barred by the limitation of time." The same principle was addressed by the same court in *Aaron Ndip v Catholic Education Secretary*¹⁷⁵ by A N Njie JCA. Here an award by the Kumba High Court for underpayment of salary was set aside on appeal for being time barred "having been brought over 4 years after the wages had fallen due."

¹⁷⁴ Suit No CASWP/L.5/2004 Unreported.

¹⁷⁵ *Supra*

Specific Re-Instatement

It would seem from a casual reading of the labour code that the legislator limited the remedy for wrongful determination of the employment contract to the payment of damages. This interpretation may find justification in section 39(1) of the code which explicitly states that “every wrongful termination of a contract may entail damages.” Does the exclusive reference to damages imply that all other forms of remedies in employment law have been excluded? The answer to this question assumes greater significance in the context of the reluctance in Anglo-Nigerian law to make orders reinstating dismissed workers engaged in a master servant relationship.

Re-instatement is an adjunct of the general equitable principle of specific performance in contract law. The courts have for long been reluctant to order for the re-instatement of dismissed workers because of the argument that such an order is analogous to slavery since it amounts to imposing a servant on an unwilling master or vice versa.¹⁷⁶ Besides, the idea was further supported by the contention that re-instatement which evolved out of equity could not be granted where the employment relationship was personal in character. Equity which does not act in vain is according to this argument reluctant to order re-instatement since it would be pretty difficult for a court to enforce the order against a recalcitrant employer.

However, the award of damages the predominant relief in such situations often meant the perpetration of injustice particularly against the worker. Since damages in various instances proved grossly inadequate as compensation, there was need for a recourse to be made to the alternative remedy of specific performance. Although this proved difficult in the face of the various decisions in which the courts had refused to specifically enforce contracts of employment, English courts were the first to do so when in *Vine v National Dock*

¹⁷⁶ See generally *Hill v C.A Parsons & Co. Ltd* (1971)3 W.L.R page 995.

Labour¹⁷⁷ it was said that an invalid dismissal means the worker has not actually been removed from employment.

The critical issue is whether this common law spirit applies in Cameroon such that it could be said that the labour code contemplated the possibility of making an order reinstating a wrongly dismissed worker? The answer to this question lies in a careful and reflective analysis of the code itself. The starting point of this analysis is naturally section 130 of the Labour Code. By section 130 (1) of the Labour Code an employer may only terminate the employment of a staff representative after seeking and obtaining the prior approval of the local labour inspector. Subsection 2 of this provision shows quite clearly that the legislator intended to protect the staff representative from dismissal for acts associated with his actions while protecting the interest of the workers whom he represents.

It seems plain that the legislator's desire to protect the staff representative is a very strong one. Indeed, the section was a direct response to the intimidatory practices against labour leaders by employers. It was during the turbulent periods of the early 1990s common practice for employers to harass labour leaders with punitive measures like sackings and transfers in order to silence them. In the face of these developments, it was understandable why section 130 of the code took the unusual position of proscribing the termination of a staff representative for his union activities.

Our initial question of whether orders of reinstatement can lie under our labour dispensation was answered by section 130 (3) and (4) of the labour code which state thus:

“(3) Any dismissal made in violation of the foregoing provisions shall be null and void.

(4) However, in cases of serious misconduct, the employer may temporarily suspend the staff representative, pending the decision of the Labour Inspector. If the authorization is not granted, the staff representative shall be reinstalled with full pay for the period of suspension”

¹⁷⁷ (1957) AC 488

The use of such unusually strong words such as “any dismissal in violation of the foregoing provisions shall be null and void” indicates very clearly that the legislator was serious about its intention to secure the services of the staff representative. The words were quite plainly a warning to recalcitrant employers that they act in vain if they disregard the terms of section 130 of the code. From a plain interpretation of the words under reference, the conclusion that any dismissal in disregard of this provision is invalid and must be ignored is so compelling that it is idle to suggest otherwise.

Our conclusion that the use of the phrase “null and void” means that such dismissals are irredeemably bad is strengthened by section 130(4). This important subsection puts the issue beyond all controversies. It makes it plain that a dismissal of a staff representative in violation of section 130 of the code even where the dismissal is for gross misconduct is incurably bad and worthless with the effect that such a dismissed worker “shall be reinstated.” Section 130 (4) of the code has besides interpreting the words “null and void”, also critically stated what should be done where such an ill-fated dismissal occurs.

Epuli J as he then was sitting at the Buea High Court clearly endorsed the principle of the reinstatement of a dismissed worker in *Linonge v Six International*¹⁷⁸ when he affirmed the power of a Labour Court to order the re-instatement of a dismissed worker in appropriate circumstances. The judge noted that he would have reinstated the plaintiff worker had it not been for the fact that the job he was doing had been completed. In fact, it will be most strange for a labour court to decline to exercise this undoubted jurisdiction when in practice the labour inspectors in the country have been consistently exercising it over the years even in cases falling outside the ambit of section 130 of the labour code.

In most common law jurisdictions, the courts consistently reinstate workers whose employments are protected by statute in

¹⁷⁸ See Dubilla Mbah-Fongkimeh (1998) “The Wrongful Dismissal of a worker: A critical Appraisal of the Position in Anglophone Cameroon” LL.B Thesis, University of Buea: 18.

ways similar to section 130 of the code. This principle was adopted by the Nigerian Supreme Court in *Olaniyan v University of Lagos*¹⁷⁹. Here the appellant and other senior members of staff of the respondent University were terminated in a manner contrary to the University of Lagos Act 1967 which regulated their employment. The court reversed the respondent's action with a consequential order that the appellants be re-instated as professors.

Furthermore, section 4(4) of the code provides a potent protection against anti-union discrimination with subsection 3 of the section making "any act" contrary to the section null and void.¹⁸⁰ It follows quite naturally that a dismissal of a worker (or punitive transfer) for actions connected with his membership of a trade union is null and void with the same effect that the courts could order the specific reinstatement of such a dismissed worker. Simply, any dismissal or transfer of a worker because of the worker's membership or non-membership of a union or activities in a union will be null and void with the same result that the court could order his reinstatement.¹⁸¹

These provisions give effect to Article 1 of the ILO convention 89 which has been ratified by Cameroon. Convention 89 relates to the application of the principles of the right to organise and to collective bargaining which has been recognised as providing, adequate protection against anti-union discrimination. However, it does seem obvious that in spite of this liberal legislative regime

¹⁷⁹ (1985) All NCR

¹⁸⁰ See the preambular provision of the 1996 Constitution which must be read with section 65 which insist of the freedom to form and belong to trade unions in the country.

¹⁸¹ Union members are routinely harassed by employers and government. In April 1996, a trade union delegate was arbitrarily dismissed by the leadership of National Social Insurance Fund which blatantly forbade all union activities in the organisation¹⁸¹. The dismissal *SYNES Vs Dr Dorothy Njeuma* (Supra) suit has to be situated within the context of the intolerance of trade unions. This union had brought an action for harassment of its members by the then Vice-Chancellor of the university of Buea but the suit was dismissed on a preliminary objection that the union was not a juristic person.

including the ratification of the above ILO convention, the courts have by their own default continue to be reluctant in specifically ordering the re-instatement of dismissed workers in appropriate cases which is a carryover of the dictatorial tendencies of the one party regime of the past.

Admittedly, the reluctance to make such orders are based on the assumption that re-instatement ordered by the court will not work as the atmosphere for a continuance of employment had become irretrievably destroyed by the determination of the employment. This view posits that the harmony required for a conducive performance of the employment which is considered a vital ingredient for continued employment is shattered by a dismissal of the worker. According to this view, the re-employment and keeping on the staff a worker whose employment has been determined will lead to undermining managerial authority¹⁸²

The mere presence of an employee who had been previously dismissed according to this view opens up management to ridicule and sends a wrong message to other workers. The exponents of this view further contend that this will create an impression of a management no longer in perfect control, which will exact an unimaginable toll on industrial performance. The idea that re-instatement ordered by the court will not work is however a perfect illustration of the courts respect for the employers view¹⁸³.

It is the employer who normally feels it will be unable to accommodate or accept a dismissed worker into his previous employment. After all, the worker who takes the trouble of suing and asking to be reinstated has manifested enough evidence of his desire to go back and remain in employment. Where a worker who admittedly is the weaker partner in the employment relationship does this, it is grossly unjust to meet him with such arguments.

Against all these however must be seen the advantages of the specific order of re-instatement in employment law. Studies in the

¹⁸² Linda Dickson: "Re-employment of unfair Dismissed Worker," *The Lost Redemy* (1981) Vol.10, *The Industrial Law Journal* page 166 and 167.

¹⁸³ *Ibid.*

United States and England have shown the prevalence of the remedy of re-instatement in cases of wrongful dismissals¹⁸⁴. Dismissal carries infamy and stigmatizes the worker¹⁸⁵. Although wrongful termination may not carry such frightful negative incidences it does carry its own negative effects.

Workers forced out of employment whether through dismissal or termination have problems in getting alternative employment. This is irrespective of whether their dismissal or termination has been declared invalid by a court. The order of specific re-instatement can be of immense benefit to a dismissed employee even if it is to last for a very short period. The employee who goes back to his employment could resign thereafter. By resignation an employee completely removes the stigma attendant on being compelled out of employment.

The international Labour Organization (ILO) convention of 1982 to which Cameroon is a signatory emphasizes the relief of re-instatement in cases of wrongful dismissal. The convention enjoins all tribunals vested with responsibility to decide cases of wrongful dismissal to order the re-instatement of employees wrongfully dismissed except where such tribunals do not have the jurisdiction to do so. The philosophy behind this convention's recommendation is commendable. A committee of experts who have examined the effectiveness of compensation as deterrence against the arbitrary determination of employment had shown that it is ineffectual¹⁸⁶.

¹⁸⁴ Ibid.

¹⁸⁵ See *J Irem v Obubra Local Council* (Supra)

¹⁸⁶ B. Napier; "Dismissal - The International Labour Organisation Standard" *The Industrial Law Journal* Vol. 12 at page 91.

Compensation for Work Related Injuries

Introduction

The law on the compensation of workers injured in the course of employment in the country has its roots in colonialism. In the former Western Cameroon which was administered as part of Nigeria, the English Workers Compensation Act 1925 was the applicable legislation regulating the payment of compensation of workers injured in the course of service. Meanwhile, under French colonial administration east of the Mungo, workers compensation claims were peculiarly handled by private companies such as Chanas and Private Insurance, AMACAM, CCAR, SOCAR etc.

This differentiation in legal regimes and machinery for managing worker's compensation in the country naturally led to a variety of avoidable difficulties that necessitated the harmonization of legislation dealing with industrial accidents and occupational diseases. The harmonization was realized when Ordinance No 73-17 of 22nd May 1973 was enacted by presidential fiat. This decree created the National Social Insurance Fund as an administrative body and vested it with responsibility to administer a wide range of social insurance compensation for workers in the entire country.

The National Social Insurance Fund

The Labour Code has not made detail reference to compensation for occupational mishaps or the payment of social insurance benefits to workers. This is a unique feature of Cameroonian law. However, Part 7, chapter 1, of the labour code creates an institution for labour and social insurance administration in section 104(1). This institution is from the express wordings of this provision 'comprising all services responsible for matters relating to the condition of worker's labour

relations, employment or manpower, movement, vocational guidance and training , placement, the protection of workers health as well as social insurance problems.’

The actual institution to provide the service alluded to in section 104(1) above was created by Ordinance No73-17 of 22nd May, 1973 which instituted the National Social Insurance Fund (NSIF) commonly known by its French acronym CNPS (Caisse Nationale de Prévoyance Social). Though created in 1973, the fund did not immediately become operational in the sense of assuming the responsibility for the indemnification of workers for work related injuries. The fund started its work only after Decree No 76 -321 of 2nd August, 1976 was enacted conferring it with the responsibility of managing all industrial accident matters throughout the country as from 1st July, 1977.

NSIF’s competence was defined by the combined provisions of Art 1 and 5(3) of Decree No 76-321 of 2nd August, 1976. These provisions vested the exclusive handling of the indemnification of workers for work related injuries and all matters relating to payments for workers insurance coverage on the NSIF. Art 1 of this Decree for the avoidance of any doubts, specifically obliged private insurance companies (which before now had handled these claims) to transfer all documents relating to industrial accidents which arose before July 1, 1977 to the NSIF.

The National Social Insurance Fund (NSIF) which is a public establishment endowed with legal status and financial autonomy has been placed under the supervisory authority of the Ministry of Labour and Social Insurance and administered by a Board of Directors. The fund’s principal mandate is to implement the social insurance policies of the state. Although the bulk of its work is the payment of family and old age allowances, we have limited our discourse in this book to compensation for industrial accidents and occupational diseases.

It may be observed that the NSIF deals with essentially two categories of users, namely the wage earner and members of his family and the employer. Since the wage earner for the purposes of the NSIF is synonymous with the worker as defined by the Labour

Code, the discussion here proceeds on the basis of the definition of a worker in chapter 1. It is necessary to commence this analysis by a review of the notions of industrial accidents and occupational diseases and the nature of the liability of the fund when these occur.

Industrial Accident

A worker's claim for compensation under the legal regime regulating the NSIF is almost entirely based on two planks. Firstly, the worker must establish either that he has sustained an injury or fallen ill in the course of the performance of his work. This in essence means that for an industrial accident to come within the contemplation of this law, it must result from a mishap occurring in the course of employment. What then is an industrial accident for NSIF purposes? It is to Law No 77/11 of 13th July 1997 that we must turn for a definition of the concept.

Article 2 of Decree 77/11 defines industrial accidents rather descriptively as referring to an accident in which a worker is involved regardless of its cause. The provision proceeds to elaborate further on this definition by identifying situations falling within what it considers industrial accidents. These situations in the words of Article 2 include all those things resulting from work or during work, during travel to and from work and from a worker's principal residence or secondary residence which gives a certain character of permanency.

The same provision also provides that an accident also comes within the definition of industrial accident when it occurs during travels funded by the employer. Article 2 in substance defines industrial accident expansively as covering mishaps occurring in the course of work proper as well as those during trips associated with the worker's employment. It is thus quite clear that under this provision, all accidents which occurred while the worker was in transit from the place of work to a place generally where the worker usually takes his meals are covered by the definition. This is however, subject to the exception that the accident should not have occurred along a route to which the worker diverted into for reasons dictated

by the workers own interest unconnected with the essential requirements of the employment.

In spite of this expansive approach, we cannot fail to comment that Art 2 has defined industrial accident rather un-illuminatingly. As a matter of fact, to say that an industrial accident is an “accident” in which a worker is involved does not advance the issue any further. It is for this reason necessary to attempt a realistic and functional definition of an accident for the purpose of NSIF compensation. Drawing from the etymological character of the word accident, it is certain that an industrial accident would invariably involve a sudden and precipitate mishap which causes bodily injury to the worker.

The obvious example of where a mill chops off a worker’s hand is in point and may be contrasted with a situation where part of a worker’s boots was cut by a machine. While the former falls within the definition of an industrial accident the latter is clearly not an industrial accident though it occurred in the course of employment and has caused loss to the worker.

The NSIF has itself indicated a preference for the definition of industrial accident by the Supreme Court of France associating an accident to ‘injury’ to human body resulting from a violent and sudden action from an external cause¹⁸⁷. Based on the present legal analysis and NSIF practice in the field, compensation for industrial injury may only be paid where the existence of injury to the human body resulting from a violent and sudden action from an external cause is proved.

An accident has to be violent and sudden. It is this precipitate element in the definition of industrial accident that distinguishes it from an occupational disease. It should be perfectly possible to identify the precise point in time in which the accident occurred. Unlike an accident, a disease generally involves a slow and continuous evolutionary process. There is, therefore, a link between accident, injuries sustained and employment. Once injury is established, it is irrelevant that the injury did not require treatment or that it is internal or external, grave or minor.

¹⁸⁷ NSIF, Guide to Social Insurance, Yaoundé.

On the other hand, material damage suffered by a worker does not come within the contemplation of the definition of an industrial accident as conceived by Decree No 78/547 of 28th December 1978. It has to be treated differently and in a separate action.

Materiality of Accidents

While the issue of injury is paramount, it is worth noting that injury as conceived under the spirit of Decree No 78/547 of 1978 is not limited to something that bruises the worker's physical body. Although the decision of *China International & Water Anor v Ndinwa W Ndi*¹⁸⁸ is difficult to navigate, a careful reading of the judgment shows that a loss of a workers ability to hear resulting from deafening noise associated with the blasting of rocks in a construction site qualifies as an industrial accident even if no other physical harm was caused.

What is imperative here is proof that an industrial accident resulting in a worker's injury took place. *China International & Water Anor v Ndinwa W Ndi*¹⁸⁹ is to this extent also significant because it identifies the procedure for proving industrial accidents in the event of a disagreement. It was in the *Ndinwa W Ndi* case acknowledged that such medical evidence as a doctor's certification or a worker's hospital book could be sufficient in determining the question of the injury of the worker.

The same decision must nevertheless be criticised for the statement by Justice G A Moutchia that:

“Contracting to work with dynamites is accepting all the risks that go with it, all security measure put in place by the employer notwithstanding. The principle of *volenti non fit injuria* must be invoked”

This strange mis-statement of the law in this province does not form part of our law. It, in fact, does not form part of English law either! The statement certainly flies in the face of Art 2 which defines

¹⁸⁸ (2005) 1 CCLR 111

¹⁸⁹ (2005) 1 CCLR 111

an industrial accident as referring to an accident in which a worker is involved regardless of the cause.

The correct position was rather indicated in the Akem Benbella case by Bawak JCA. After averting to the dangerous nature of the duties of the respondent in the case under reference, the judge held that this demanded that his employers should have provided them with suitable materials to safely do the job. The Court of Appeal further made the valid point concerning the employer's non-registration of the respondents thus:

"They also failed to register the respondent with the National Social Insurance Fund. Had they done so, the fund would have been bound by law to provide the respondent with adequate financial compensation commensurate with the injuries sustained"

It was indicated obiter in *Chou John v Cameroon Development Corporation*¹⁹⁰ that while injury sustained from a tapping knife used in the course of the tapping of rubber would qualify for industrial injury, this was subject to satisfactory proof. In so holding, Justice L Forbang sitting at the High Court Buea gave credence to the testimony of a medical doctor who in giving evidence for the defence discredited the evidence of the worker that he had been the victim of an industrial accident. It may be added that the worker himself made his case difficult to believe when he attempted to make a connection between his subsequent cataract and blindness to the knife injury.

Claiming Compensation for Industrial Injury

To be qualified to claim compensation for occupational hazards from the NSIF, the applicant must demonstrate by credible evidence that he or she comes within the purview of the categories of persons covered by the relevant Decree of the 13th July 1977. Section 5 of this Decree enumerates the categories of those covered rather expansively to include workers as defined under sections 1 and 23 of the Labour Code. It needs to be observed that the definition of a worker under these provisions is flexible covering as it thus persons who would

¹⁹⁰ HCF/L.29/2002-2003.

otherwise not be regarded as workers *stricto-senso* under the common law.

Section 5 also extends qualification to bring claims for compensation to seamen governed by Ordinance No 62-Of-30 of March 1962 on the condition that their employer is affiliated to the National Social Insurance Fund, managers of limited liability companies subject to limitations imposed on their shareholding, etc. Apprentices, persons engaged in the National Civil Service for participation in development, students of technical education establishments and individuals placed in training centres, functional rehabilitation centres and vocational re-education centres amongst others and voluntary insured persons who pay their contribution regularly are also workers for the purpose of NSIF compensation.

Occupational Accident

It must be noted that a worker may by definition only claim compensation under this law where two conditions are fulfilled. Neatly put, it has to be shown that the worker had an accident while in the course of employment. Certainly, the straightforward situation where an accident occurred during the performance of the normal activities of the victim is deemed to be an industrial accident. Furthermore, it also cannot be contested that accidents occurring within the premises of the company and during working hours even if the cause of the accidents is not directly linked to the occupational activities of the victim are compensable.

However, the criteria of time and place are not always implemented in a systematic manner. It is obvious from Art 2 of Law No 77/11 that the determining factor in ascertaining whether the accident occurred in the course of work is often the degree of control of the victim by the employer at the time of the accident. The same provision defines a place of work with reference to control as “any place where the worker is or going to *at the behest of the employer* and in the interest of the company or as a result of his work.” The place of work will therefore be any place where the worker is at the behest and call of his employer and in the interest of the company or as a

result of his work. Working hours may thus be defined as the total time at work even if the time is not exclusively devoted to work in the actual performance of the functions of the worker.

It is for these reasons clear that one would still be in his place of work if he was involved in an accident while on mission in a different town from where he ordinarily works. In the final analysis, any accident occasioned by the demands of work or happening during work is presumed to be an industrial accident. In event of doubt the onus rests on the employer or the National Social Insurance Fund to displace the presumption with solid evidence showing the absence of a link between the accident and the work of the employer

The Place Where Meals Are Taken

It is perhaps necessary to address the issue of accidents which occur during meals. The first issue to note here is the fact that the place where meals are taken is construed flexibly. Thus approached, it could mean the company's canteen or the restaurant chosen by the workers. The critical definitive element is that it should be the place habitually used by the worker. The place where the worker only occasionally takes coffee is in principle not contemplated by this definition. However, exceptionally an accident which occurs where a worker is compelled beyond his control to take a meal is an industrial accident in spite of the fact that it is not his usual place for eating. This shows that the criterion of consistency is not fulfilled. Certainly, this will be the case where a worker goes to eat in another restaurant for the first time because of the closure of his usual restaurant.

The Protected Route

Accidents occurring while en route to the place of work or restaurant come within the definition of an industrial accident. However, an accident is only covered by the law if it occurred along the shortest and most convenient route between the place of residence and the restaurant or canteen where the worker habitually takes his meals. The route covered commences at the door step of

the residence i.e. from the moment when the worker leaves his house to go to work.

The accident must occur during the normal time required to cover the legally protected route. However, the fact that the worker is expected to take the shortest and most convenient route, cannot be construed to limit the worker into taking the usual route only. An accident occurring at the 3rd hour in a route that will normally take a 30 minutes' walk to work will clearly not be covered. Obligatory traffic diversions during which an industrial accident occurs shall not by itself remove a worker from the scope of protection of the law.

The means of transport is immaterial .Once the worker is involved in an accident along his usual route; it will be considered that an industrial accident occurred. The fact that the victim may have crossed the street even for reasons dictated by personal interest does not remove him from the scope covered.

Interruptions or deviation from route

Deviations by a worker while along the way to work may occur from time to time. Whether such interruptions or deviations are dictated by personal interest or unconnected with the employee's work depends on a detailed examination of the circumstances in which the interruption or deviations took place. It should be noted that for the accident to be covered, it should have occurred along the normal route to work.

Occupational Diseases

It is universally recognized that a worker who becomes sick as a result of work related exposure should be compensated by the employer. Section 3 of Law No 77/11 of 13th July 1977 incorporates this universal industrial law principle into Cameroon's social insurance law. The section defines an occupational disease as any disease resulting from the performance of certain professional activities. This definition has in substance been adopted by the NSIF

itself since the fund recognises that an occupational disease is “one resulting from the performance of certain occupational activities.”¹⁹¹

It is clear from these definitions that a worker must establish two important elements in order to make a successful claim for compensation for occupational disease. Firstly, a link has to be established between the alleged disease and the worker’s employment and secondly it has to be shown that the disease is amongst those expressly prescribed as occupational diseases for the purpose of compensation. Any failure to demonstrate these elements by credible evidence at the trial is fatal.

*Evouna Hyppolite v Boulangerie Modern*¹⁹² excellently captures the above conclusion. The Supreme Court affirmed a Court of Appeal decision rejecting the claim by a worker that a hernia with which he was diagnosed was an occupational disease acquired in the course of the latter’s employment in a bakery. The Supreme Court’s decision was based on the assumption that it is from the ordinary cause of event unlikely that the nature of the worker’s work could result in a hernia. It is evident from the principle distilled in the *Evouna Hyppolite* case that making a connection between the worker’s work and the illness allegedly suffered while working is crucial.

In Cameroon, for a disease to be considered as an occupational one and qualify for compensation, it must figure on the list of occupational diseases in force in Cameroon. This list is not exhaustive as new diseases can be added to it on the recommendations of the National Commission for Industrial Hygiene and Safety.¹⁹³

Procedure for Filing Compensation Claims

The procedure for filing claims for compensation under the NSIF scheme has been statutorily prescribed by Art 1 of Decree No

¹⁹¹ NSIF, Guide to Social Insurance, Yaoundé: 59.

¹⁹² Appeal No 164 of 29 June 1971.

¹⁹³ NSIF loc it

78/546 of 28 December 1978. Under this provision, the victim of an occupational hazard must inform his employer as soon as possible. The employer on the other hand has a period of not more than three days beginning from the date of notification by the worker to notify or declare the accident or illness to the NSIF.

In the case of failure by the employer to declare the hazard (accident or disease), the victim worker has under Article 46 of Decree No 77/11 of 1977 a period of three years following the date of the accident or the date on which the disease is medically established to make the declaration to the NSIF himself. The application for compensation for an accident or disease is normally made on a special form which the National Social Insurance Fund issues on request in triplicate. The principal application is addressed to the Social Insurance Centre responsible for the place in which the accident occurred along with the initial medical certificate.

It should be stressed that non-compliance with Art 46 is fatal as a claim made after the three year time limit becomes statute barred. Not even a court can grant extension of time to file an otherwise statute barred compensation claim. Equally worth emphasising is the fact that the claimant should ideally have been registered with the fund. Such registration is not as is erroneously considered by some a condition precedent for presenting a claim for compensation from the NSIF.

In view of what has been said above, it is necessary to discuss the consequence for the non-registration of a worker by an employer. What in law is the effect of non-registration on a worker's capacity to claim compensation from the fund? The answer to this question lies in section 17(6) of Decree No 77/11 of 1977 which states that:

“In all cases, the National Social Insurance Fund takes charge of all industrial accident and professional illnesses occurring during work on account of an employee not registered and recover damages paid over from the employer.”

The use of the phrase that the Fund will take charge of all industrial accident, and professional illnesses... on account of an employee not registered in the above provisions speaks volumes for the intention of the legislator. It shows quite categorically that the

mere fact of non-registration of a worker with the NSIF cannot defeat a claim for compensation brought against the Fund. The worker can in fact be registered after the occurrence of the accident or the industrial illness as the case may be.

In *China International Water & Anor v Ndinwa Willfred*¹⁹⁴ a request by the NSIF requiring the employer to register a worker who had not been registered at the time of the accident was considered by the Court of Appeal as consistent with Law No 77/11 of 13/7/1977. It was because of this that the court subjected the respondent to very debilitating criticism for rushing to a civil court instead of first ensuring that the registration was retrospectively done before filling the action.

It will, in fact, be absurd to suggest that workers can only benefit from social insurance claims including retirement pensions only after their employer had registered them. Neither Law No 77/11 of 13/7/1977 nor any other Law has said so. Besides, to suggest that that is the case would amount to ignoring the legal duty of the NSIF to get employers to register their members for the purpose of social insurance benefits. The NSIF's failure to discharge its duty cannot result in the punishment of workers who play no role in the registration process.

The failure of the Fund to use their powers of administrative and criminal sanctions to compel registration of workers must be borne by the fund itself since it must pay the benefits of the workers in terms of the spirit of section 17 above. An action against the NSIF for compensation or retirement benefits by a worker whose employer did not register with the Fund will succeed as a matter of course.

By section 3 of law No 77/11 an industrial accident should be certified by a medical certificate issued in the victim's name. The certificate which should be made in four (4) copies shall be forwarded to the social insurance centre, the employer, the worker and the physician respectively. The medical certificate describes the general state of the victim, the consequences of the accident and the possible duration of disablement.

¹⁹⁴ *Supra*

But if upon expiry of the period of temporary disablement established by the initial medical certificate the victim has not yet resumed duty, the employer must ensure that an attestation of prolongation is established by the treating physician. When the victim has recovered, the employer or failing this the victim himself shall ensure that the treating physician established a final medical certificate for him. This certificate describes the after effects or indicates the definitive consequences of the accident. It therefore indicates whether the victim has a partial or permanent disablement.

Compensation in matters of industrial accident is based on calculations done pursuant to the above certification. Disputes over the measure of compensation and on whether or not a worker has been registered with the NSIF are governed by Art 42 of the 1977 Decree. Such disputes were in the Ndinwa Wilfred Ndi case regarded as falling quite appropriately within the jurisdiction of the labour court. It was for this reason that the Court of Appeal reversed the decision of the Mezam High Court which had determined the plaintiff's claim under the regular proceedings of a suit brought by way of a writ of summons.

Disputes in NSIF Management of Compensation.

The legislator has granted to both the insured persons and the employers the right to protect their interest if they feel cheated by a decision of the NSIF. These can approach either the Administrative complaints committee¹⁹⁵, the Provincial Social Insurance Disputes

¹⁹⁵ This committee which is constituted by the Board of Directors of the National Social Insurance fund receives complaints from users. The complaints are addressed to the chairman of the committee within three months following the decision rejecting an application for benefits or notice to pay contributions. If the committee fails to reply within three months following the lodging of the complaint it shall mean that the said complaint is equally rejected. The insured person shall have a time limit of two months and the employer 15 days to refer the matter to the Provincial Disputes Committee after being notified of the dismissal of the complaint. By the Administrative Complaints Committee Where the insured person or the employer does not respect the prescribed time limits, the insured person shall lose all rights of appeal. In respect of the employer, the National Social Insurance Fund shall issue a writ signed by the chairman of the Provincial Social

Commission¹⁹⁶, the Court of Appeal¹⁹⁷ and Supreme Court¹⁹⁸ as the case may be.

As for disputes between the NSIF and employers, the legislator has evolved various ways of enabling the National Social Insurance Fund to guard itself against possible misappropriation of benefits and to protect itself from the negligence, insolvency and bad faith of employers. The NSIF may issue a notice inviting the employer who owes contributions or additional charges and penalties for delayed payments to regularise his position within three months from the date of notification of the summons.

Indeed, chapter iii of law No 77/11 gives the NSIF immense powers to deal with recalcitrant employers. From the tenor of this chapter, any employer who by violence, threats or manipulations attempts to undermine the activities of the Fund exposes himself to criminal prosecution.¹⁹⁹

Insurance Dispute Commission. The writ shall be notified to the employer who may appeal against it before the Court of Appeal. See NSIF Guide Op cit at 94.

¹⁹⁶ This commission settles disputes in the first instance resulting from the implementation of law and regulations governing Social Insurance in respect of liability, basis of assessment and connection of contributions and the granting and payment of allowances. The Provincial Social Insurance Dispute commission is activated by a simple request or registered letter addressed to its secretariat. The chairman of the commission summons the parties and witnesses at least 15 days before the date of the hearing. The parties are bound to appear, except in situations where their absence is justified. They may be represented or assisted by an employer or worker of the same branch of activity, or by a representative of the trade Union or employer's association to which each party belongs. Save in the case of a counsel, any authorised agent of the parties shall be appointed by a writer document. An absent underrepresented plaintiff may have his suit struck out except where it can be shown that the circumstances justifies the absence such a plaintiff may make a new application to the commission subsequently

¹⁹⁷ Judgement of the Provincial Social Insurance Disputes Commission is subject to appeal and the parties have 15 days from the day following the delivery of the judgement to lodge an appeal. The appeal is lodged through an ordinary request or by registered letter sent to the secretariat of the Provincial Social Insurance Disputes Commission which shall forward the case file to the registry of the competent court of Appeal. Appeals from this court to the Supreme Court follow the usual practice of procedure.

¹⁹⁸ Op cit pg. 94

¹⁹⁹ Law No 77/11 of 13 July, 1977. Chapter VII

Any employer who has not complied with the provisions of the legislation governing social insurance shall be punished with a fine of from five thousand francs on the preliminary complaint of the General Manager of the National Social Insurance Fund without prejudice to the payment under the same judgement on the application of the legal department or the civil party of the contributions owed by him as well as the additional charges for late payment.

In the case of a repeated offence, the offender shall be liable to imprisonment ranging from one month to six months or a fine ranging from five thousand to one hundred thousand francs or to both such imprisonment and fine. This is also in addition to the possibility of the payment under the same judgement, on the application of the legal department or the civil party, of the contribution owed him as well as the additional charges for late payment.

Irrespective of the above sanctions, the NSIF is permitted to pursue the employer to pay allowances that are unpaid²⁰⁰. The NSIF may sue any person who is guilty of fraud or of making a false declaration in order to obtain or to cause to be obtained allowances which are not due. In such a case the Fund shall approach a criminal court which may sentence such persons and their co-offenders as prescribed by the law.²⁰¹

²⁰⁰A guide to Social Insurance pg. 98

²⁰¹ Law No 77/11 of 13 July, 1977. Chapter VII

Vicarious Liability for Acts of Worker

Vicarious liability has been defined simply as the legal responsibility of an employer for the wrong committed by his employee against another person during the course of the employee's employment²⁰². This liability is premised on the idea that "the relationship of employment imposes a duty on the employer to indemnify or reimburse the employee against all expenses."²⁰³ It goes without saying that this indemnity inevitably vests the employer with liability covering all losses incurred by the worker in the execution of his employment.

The idea that the employer should indemnify the worker for the loss incurred in the course of employment is almost of universal application. It cannot be expected to be otherwise since the employer is normally financially stronger than the worker and so better positioned to absorb the loss. Besides, it is predicated on the principle of fairness graphically illustrated in the English case of *Hutchinson V York*²⁰⁴ thus:

"This principle upon which a master is in general liable to answer for accidents resulting from the negligence or the unskillfulness of his servants is that the act of his servants is in truth his own act."

It is from the principle beautifully articulated above clear that the employer must assume responsibility for the wrongs of the workers so long as these were committed in the course of employment.

The important question in matters such as these is the one related to whether the idea of holding an employer liable for the fault of the worker is applicable in the context of the labour code in the country.

²⁰² U.G. Archibong A critical Analysis of Employer's liability in a contract of employment LL.M Thesis 1993: 36

²⁰³ Archibong cites Chitty's book on contract. Archibong op cit at 37

²⁰⁴ (1850) 5 Exchequer 31

The answer to this question lies in a careful analysis of the code, local as well as foreign precedent.

Section 23(1) of the Labour Code defines a worker with reference to the performance of service under the control of the employer. The notion that comes out very clearly from section 23(1) is the fact that the worker not only acts for the employer, but does so under the latter's control and management. It follows quite naturally that the worker's act is the employer's and the worker's mismanagement of his work which has caused injury to a third party should be directly attributable to the employer who is in fact managing the worker.

Quite apart from the above construction of section 23(1) of the code and the conclusions drawn about the liability of the employer above, it will indeed be strange to suggest otherwise. There can be no justification why an employer who engages the worker and sets him to work should not be liable for the fault of the latter. The labour code in fact recognises the broad concept that the employment of the worker sets a variety of things in motion for which the employer may become liable for the acts of the worker.

Although clumsily enacted, section 173 of the labour code has codified the principle of the civil liability of the employer for the acts of the worker. This provision attaches civil liability for a variety of failings of a worker who is at a leadership position in the employer's undertaking where he works. It is thus plain from this provision that the notion that the employer is vicariously responsible to third parties for the wrongs of the worker was perfectly contemplated and made part of the labour code.

The decision of the Court of Appeal Buea in *CDC V Akem Benbella*²⁰⁵ puts the point that the employer is vicariously liable for the faults of the employer that has caused injury to third parties beyond dispute. In this case, CDC was adjudged liable to the respondent who was the company's worker in damages. The respondent had brought the action against CDC his employer claiming compensation for injuries he suffered from the assault by

²⁰⁵ *Supra*.

villagers in the course of a search to recover the company's stolen crops.

In rationalising the court's decision, Bawak JCA as he then was, noted that "in law one reason it may be important to know whether B is a servant or an independent contractor is that a master is vicariously liable for torts committed by his servant." The judge pointed the difference between worker's and the self-employed as lying generally in the fact that there is no similar liability for the tort of the independent contractor.

In practice, the bulk of the cases raising questions of the liability of employers for the actions of the worker sound in criminal law the majority of which are regrettably dealt with in magistrate courts. In spite of the fact that this court is at the lowest rung in the hierarchy of the courts in Cameroon, it is nevertheless necessary to make reference to them since the cases illuminate the principles involved beautifully. Since as has been indicated elsewhere, a driver is in general regarded as an employee of the employer, the driver is considered working for the employer such that the employer is liable for injury caused by the driver in the course of employment.

In *The People V Ignatius Tonge*²⁰⁶ and *The People V Binda Victor*²⁰⁷ the courts had no difficulty in holding the employers vicariously liable for damage caused by their drivers respectively. In the former the accused driver was convicted for reckless driving under section 228(2) of the penal code while in the latter the accused driver was convicted for rash driving causing 30 days incapacity to the complainant in breach of section 289(1) of the Penal Code. The decision of the courts in these cases holding the employer vicariously liable to third parties who suffered injuries from the accidents was sound in principle. It would clearly have been contrary to principle to require the worker to assume liability in situations like those in the criminal cases under reference. The usual practice of joining the driver in a civil action for vicarious liability should not have much

²⁰⁶ CFIB /349C/copt Unreported.

²⁰⁷ CfIB/387c/99 unreported.

read into it since the driver/worker is joined in the suit as a nominal party for the purpose of establishing the claim against the employer.

The next issue is the procedural one of how a third party should commence an action for the recovery of damages against an employer who is vicariously liable for the acts of a staff. Should it follow the individual procedure in labour actions requiring such claims to go through the labour inspector as prescribed under section 139 of the code or should it go straight to the courts? Since the labour code is silent on this rather important issue, it necessarily has to be resolved by the introduction of ordinary law principles under section 156 of the labour code.

The labour courts themselves have very clearly recognised the right of parties including workers to bring separate and individual actions against employers for issues connected with employment. In *Ndip Aaron V Catholic Education Authority*²⁰⁸ Njie JCA noted that the correct procedure for a worker who had complained that the employer had destroyed his property was to bring an independent action outside the structure of the labour code.

An action by a third party to recover damage from an employer who is vicariously liable for the act of the worker is commenced by writ of summons. It will therefore attract the usual filing and other related court fees unlike what obtains in traditional labour matters which as has been noted elsewhere in this book are commenced cost free.

Vicarious Liability for the Criminal Acts of Workers.

A related issue is the question of whether the employer may be made to assume criminal responsibility for the offence of a worker acting in the course of employment. Can an employer be criminally sanctioned by imprisonment or fine for the criminal misconduct of the worker? This issue is critical because of its potential to impact on foreign investment in the country since few foreign investors would

²⁰⁸ *Supra*.

open businesses employing staff in countries where they would be at risk of imprisonment for the criminal acts of their employees.

Ordinarily and following standard principles of criminal jurisprudence worldwide, a person cannot be liable for an offence committed by another. The concept that criminal responsibility is personal which is of universal application operates under the legal dispensation in the country. An employer is for this reason generally not liable for the criminal misconduct of his workers irrespective of whether the offence was committed in the course of the worker's service or not. Section 74(2) of the Penal Code restates this universal principle of criminal jurisprudence in Cameroon by asserting that "criminal responsibility shall lie on him who voluntarily commits each of the ingredient acts or omission of an offence."

This provision which is of prime importance has been described as constituting the basic principle of the criminal law in the country. Expert commentaries in the penal code attest to the fact that section 74(2) of the Penal Code is a statutory reformulation of existing academic and case law position on mens rea which is a vital ingredient of offences without which they can be no criminal conviction.

However, the traditional notion that the employer is not liable for the crime of the worker is even under the common law subject to certain exceptions. Statute may explicitly vest criminal liability on an employer for the offences of the worker²⁰⁹. The Labour Code has thus created a variety of offences for which the employer is criminally liable for their commission. Section 29, 40, 41, 44 of the labour code all create offences of these types which though committed by staff in top management positions are attributed to the employer.

The only distinction is the minor one that the Labour Code imposes fines rather than imprisonment for most of these "crimes." There is also the other interesting distinction in some of these offences such as the failure to issue a Certificate of service. Here, the

²⁰⁹ See *Associated Tin miners of Nigeria V Chief Inspector of Mines* 1950 NLR 69 where section 101 of the Mineral Act 1964 made the holder of a mining lease personally liable for an offence committed by his tributers. See Archibong op cit at 71.

offences are not dealt with in the usual way of having the issue investigated by the police and prosecuted by the State Counsel. Such offences are often established in the course of the labour trial although proof of their ingredients must necessarily be beyond reasonable doubt²¹⁰.

It must be stressed that ordinary English law principles such as that illustrated in *Lloyd V Grace Smith & Co*²¹¹ must be carefully construed. The House of Lords had held that a solicitor was vicariously liable for the fraudulent misappropriation of client's money by his managing clerk. This case has no application in Cameroon if the idea is to suggest that an employer can criminally be prosecuted for the offence of the worker.

Quite apart from the fact that it is in fact debatable whether the case will carry such import under English law, it certainly cannot be correct to suggest that the case will displace the provisions of section 74(2) of the Penal Code. This provision which insist that people are only criminally liable for their own intentional act or omission which has caused the result complained of is a foundational principle upon which the entire criminal law in Cameroon rests. There is no way that our law can admit of a diametrically opposed principle on this issue particularly where the principle derives from a foreign precedent.

However, the fact that an employer may not be prosecuted for the offences of the worker does not in any way distract from the employer's liability to recompense third parties for loss suffered because of the criminal misconduct of their workers. The two issues are distinct and should be treated differently. In the *Atem Benbella* case, the Court of Appeal Buea found the CDC liable to the plaintiff who was assaulted by the corporation's workers in the course of employment. The fact that the workers actions of assaulting the plaintiff were clearly criminal was regarded as so immaterial that neither party even raised it.

²¹⁰ See Oyebog's case (*Supra*)

²¹¹ (1912) AC 716.

Course of Employment

The phrase “the course of employment” has a long antecedent as reference was made to it as far back as 1855²¹². Although the concept appears simple and straightforward, it has not been easy to define it in spite of the fact that it forms the bedrock of vicarious liability. Judicial attempts at a definition of the phrase have always reflected the socio-economic needs of the times. According to the learned authors Winfield & Joloweiz an employee acts in the course of employment when:

“It is expressly or impliedly authorised by his master, or it is an unauthorised manner of doing something authorised by his master or it is necessarily incidental to something which the servant is employed to do.”

This definition which is comprehensive so brilliantly captures the idea of course of employment that it is difficult to discuss the notion without making express reference to these authors. The notion of course of employment as these learned authors have aptly noted essentially relates to the idea of the worker acting in the course of his service for the employer.

²¹² See *Brydon V Steward* (1855) 2 MACQ 30 Archibong op cit at 80.

Procedure in Labour Actions

Introduction

Labour actions are unique in a variety of ways. This uniqueness is a reflection of the peculiar structure of Law No 92 -007 of 14th August 1992. This law, (the Labour Code) is unlike most other legislations a composite statute combining both substantive labour law principles and their rules of procedure in the same legislation.

The code is to this extent a comprehensive piece of legislation defining not just the right and duties of the parties in a labour relationship but also specifying the procedure regulating the conduct of labour matters. It is thus imperative to address some of the salient rules associated with labour matters under the labour code from a practice perspective.

Jurisdiction & Composition of Labour Courts

Labour actions are not amenable to the jurisdiction of the ordinary civil courts such as the magistrate and high courts. Labour actions are commenced and heard in the special labour court created by section 133 of the Labour Code although their specific jurisdiction is also subject to the law on Judicial Organisation 2006. Although reference has been made to legislation on judicial organization, it is apparent that the court contemplated by section 133 of the labour code is an autonomous court with its own peculiar rules.

A labour court at first instance is by this provision a collegiate court composed by one judicial officer and two assessors. Section 133(1) expressly defines a labour court as that made up of “a president who shall be the judicial officer”, and an employer and worker assessor. The composition of the court as prescribed under this provision is mandatory. The Supreme Court had for this reason

held in *Affair Dame Mandeng C/BEAC*²¹³ that the composition of the Court of Appeal Douala with only three judges in the absence of assessors vitiated the proceedings.

In spite of its collegiate nature; the judicial officer is a pivotal member of the labour court because s/he is vested with responsibility under section 133(2) of the code to appoint assessors from the pool of assessors selected by the minister of Justice after the latter has consulted with the minister of labour. The judge of a labour court is in spite of the Mandeng decision competent to hear labour matters under section 133(3) of the labour code where there is evidence that the assessors have failed to appear after being summoned to do so twice. This principle which has become standard practice was in fact acknowledged by the Supreme Court in the Mandeng decision.

Obviously, the hierarchical jurisdictions of the labour courts are defined by the Judicial Organization Law of 2006. This is so because the labour courts are presided over by magistrates who are judicial officers. By section 15 of the said law of 2006 labour courts headed by magistrates presiding in courts of first instance can hear cases with a quantum of claim of 10million FCFA and less. Labour matters with a quantum of claim above 10million FCFA by the provisions of section 18 of the same law go to the labour courts presided over by judicial officers serving in the high courts.

It may be observed that issues of composition of courts and hierarchical jurisdictions are fundamental principles requiring scrupulous compliance with. The failure for instance to endorse in the records that that the presiding magistrate sat alone because assessors failed to appear after being summoned twice would certainly be fatal on appeal for reasons of the court's incompetence.

Territorial Jurisdiction of Labour Courts

Section 132 of the Labour Code asserts that "the competent court shall in principle be that of the place of employment." This is subject off-course to the fact that under the same section a worker

²¹³ Arrête No. 57/S of 12/4/1984.

who has left after dismissal may initiate the action in the labour court of his or her new residence anywhere in Cameroon. Thus, although the court of competent jurisdiction is primarily the one in the place where the worker was working, the worker could sue anywhere in the country if it can be shown that he has moved to a new town after the determination of his/her employment.

This provision on the territorial jurisdiction of labour courts has in practice resulted in two types of misuse. Firstly, it has now become common place for workers to forum-shop and file their claims in jurisdictions where they believe they will get favourable decisions or in jurisdictions of their native town even where they are not actually resident there. Suffice it to say that such actions are bad and should be struck out on the basis of the decision of the Court of Appeal Buea in *General Manager CDC v Andrew S Nfor*²¹⁴.

The case of *Fotse v Societe Activa S.A*²¹⁵ aptly presented this type of a difficulty and interestingly how to deal with them when they occur. The plaintiff in this case was a married woman who had worked with the defendant's company in Douala. Although she and the family were still living in their palatial home in Bonapriso in Douala, she had come down to Buea and rented a one room apartment apparently for the purpose of bringing an action against her former employer.²¹⁶

On these facts, the employer vigorously contended that her suit be dismissed on the ground that the plaintiff was in substance still resident in Douala. However, preferring her one room accommodation as evidence of her residence, the trial court ruled that she was resident in Buea. On appeal Fonkwe JCA as he then was held on the issue of her residence thus:

²¹⁴ (1997) 1CCLR 116

²¹⁵ *Supra*.

²¹⁶ This is particularly common and seems to be based on the idea that English Courts are lot more sensitive and less likely to side with the powerful employer. The idea is based on the assumption rightly or wrongly that the francophone judge is pro-administration and more likely to accommodate the autocratic actions of the employer.

“It is my understanding of the law that the principle of territorial competence enunciated in section 132 of the labour code was intended to protect the worker who lost his/her job and took residence outside a place of employment or where he or she was working. In the case under consideration respondent continues living in Douala where she was working and her secondary residence in Buea or anywhere else cannot benefit from this law meant to protect only the displaced dismissed worker. The Wouri High Court should logically be the competent court to entertain this matter because she has not lost her residence in Douala”

Based on the above reasoning, the court struck out the case while advising the plaintiff to file her suit at the Wouri high court.

The second misuse results from a wrong interpretation of the provision relating to establishing the new residence of the worker. Some courts have fallen into the monumental error of insisting that the residence of the worker may only be established by a certificate of residence established by a district officer. This view was rightly discounted by Bawak JCA as he then was in *Pamol Plantations Vs William N Kimbeng*²¹⁷. Bawak JCA categorically stated that such a worker only needs to file a motion *ex parte* supported by an affidavit disclosing the new residence of the worker. In so holding, the Court of Appeal affirmed the decision of the Bamenda High Court assuming jurisdiction in the case on the grounds that, ‘the law makes no reference to the issuance of a certificate of residence by a district officer.’

While the decision of Bawak JCA moved the issue in the right direction, it with respect still fell short in one important respect. A better view suggests that the court of the worker’s new place of residence can and should in fact assume jurisdiction even without an application for the purpose particularly where the statement of non-conciliation expressly states that the worker is no longer resident in his place of work. Even where the statement of non-conciliation has not stated it, the court should hear the case where factually the

²¹⁷ *Supra*.

worker has moved and is living in a new jurisdiction without the necessity of a motion seeking leave for the purpose.

Fonkwe JCA as he then was, clearly identified this principle in *Fotse v Societe Activa S. A*²¹⁸ when he ingeniously argued that:

“After all, section 132 of the Labour Code does not say that a court should be asked to assume jurisdiction in a place where the dismissed worker resides. No other law favours this time wasting procedure which seems to be gaining grounds in some of our courts”

The erudite justice went ahead and criticised the practice of asking a labour court to assume jurisdiction by motion as a completely unnecessary gimmick which in our opinion should be rightly discarded.

Commencement of Labour Actions

The procedure for the initiation of a labour action has been set out in section 138-141 of the Labour Code, it is worth noting that although labour matters are civil in character, their mode of commencement are unlike what obtains in other regular civil suits. Labour actions are different from civil actions particularly because of their distinctive features with regards to filing, pleadings, etc.

Labour actions are by s.138 (1) of the code commenced free of charge Neither the registry of the relevant court or the labour inspectorate may demand payment for initiating labour proceedings for the settlement of a labour dispute .This provision is salutary when seen in contradistinction to the practice in regular civil actions. In the latter, the plaintiff has to pay high filing fees in addition to 5 per cent prospective tax on the value of the claim of the plaintiff²¹⁹.

Unlike in regular civil actions where government has used exorbitant filing fees and prohibitive pre-filing taxation of 5% of claims to impede access to the courts by the poor, S. 138 (1) of the

²¹⁸ Supra.

²¹⁹ See *Meme Lawyers Association V The Registrar High Court Kumba*. Lawyers’ laudable attempt to stop this undemocratic restriction of access to the courts was defeated by the court of Appeal Buea which ruled that the practice that places tax above justice was good.

labour code has liberalised conditions for accessing the courts in labour actions. This easy access to the courts in labour actions has enhanced the security of service of workers considerably.

However, although no worker can claim that he is unable to take an employer to court for reasons of filing fees, the poor dismissed workers may still face difficulties of different types. The cost of retaining counsel may be prohibitive. Secondly, the labour inspectors who are civil servants may for non-altruistic reasons refuse to commence a worker's case against employers in which government has a substantial interest.

Individual Labour Disputes

An individual labour dispute is the classical dispute involving a worker and his employer. This could take a variety of forms ranging from a straightforward failure to pay wages, to a complaint of a worker over the outright wrongful termination of the employment relationship. Section 138(1) of the Labour Code has clearly set out the procedure to be adopted in resolving individual labour actions which a party ignores at his own peril. Under this provision, all such labour disputes must first be brought before the labour inspector in the place of employment of the parties. The labour inspector is by section 139(1) vested with the duty to attempt a resolution of the problem.

On a complaint by either party, the inspector invites the protagonist to his office for an amicable resolution of the dispute. Often, there are three possibilities. It could happen that the parties amicably resolve their dispute completely, partially or fail to agree on all the points of their disagreement. In either situation, the labour inspector shall prepare a statement of conciliation, partial conciliation and non-conciliation respectively. Although these statements ought to be signed by the parties, it was held in the *Ken Enroy* case that a

statement of non-conciliation can legally be issued in default where one of the parties fail to sign it²²⁰.

An individual labour action actually commences when a diligent party fills a statement of partial or non-conciliation at the registry of the relevant court. The action takes off after the party makes the relevant oral declaration before the registrar that he desires that the case be heard. A worker cannot circumvent this procedure by taking his action to court without the intervention of a labour inspector. This is so as the Supreme Court had held in *Affaire Maître Penda C/ Evini*²²¹ Joseph that the attempt at reconciliation is obligatory in all labour matters. The court held that this principle is fundamental while noting that its violation involving an attempt to hear a part of a claim which did not form part of the integral part of a claimant's complaint before the inspector of labour is a legal nullity. It is from this case evident that new issues may not be introduced by an amendment in a labour court without first re-transmitting the file back to the labour inspector.

What if the labour inspector fails to prepare the relevant statement with which the case may be commenced? Section 16 of the Law on Judicial Organisation 2006 has unlike the 1989 Ordinance on Judicial Organisation made provisions for a party to compel anyone vested with a duty to perform the said duty. Based on the above, the obligation of the labour inspector to attempt conciliation clearly creates a duty for him to prepare the relevant statements of either conciliation or non-conciliation as the case may be.

It was for this reason that the Meme High Court had no difficulty issuing a mandamus in *Abaken v Labour Inspector Kumba & Anor*²²² compelling the inspector to prepare a statement of partial conciliation for the worker to commence his action. In this case, a worker who had accepted the payment of a sum in full satisfaction of

²²⁰ An earlier decision in *Felix Ekengo v Tiko Soap* suggesting that a statement of non-conciliation which has not been signed by one of the parties was delivered per incuriam.

²²¹ Arret No 32/s of 21/1/82.

²²² Suit No HCF/L.8/84. An unreported decision of the Kumba High court which was subsequently confirmed on appeal to the Supreme Court

his claim against the marketing board later changed his mind after consulting a counsel. His subsequent request that the statement of conciliation be changed to that of partial conciliation was opposed by the labour inspector. The inspector had refused to do so in spite of all entreaties insisting that he was at liberty to decide on what to do.

Collective Disputes

A collective dispute is from a plain interpretation of section 157 (1) of the Labour Code one which involves a collection of workers of an institution irrespective of whether or not the said workers are organized in a trade union. In this domain, the lone factor that unites the workers is the collectivist nature of their dispute. The collective dispute is peculiar since it lies outside the jurisdiction of the regular and labour courts. Experience has however shown that this form of disputes have been rare in the country though not completely absent.

It is apparent from this interpretational standpoint that the intervention of a group of wage earners in a matter involving their collective interest is the definitive feature of a collective dispute. A collective dispute must in the light of what has been said above be characterised by the intervention of many workers to the extent that a dispute that does not present this feature of collective interest cannot be regarded as a collective labour dispute.

That this type of dispute must involve the element of the collectivist nature of the interest of workers for it to be amenable to the collective dispute procedure was illustrated by the Supreme Court decision in *Total Fina Elf v Nounda Martin*.²²³ The court annulled the judgement of the Court of Appeal which made an award to a group of workers as though their action was a collective dispute. These workers, who had each had a dispute with their employer and left, filed their action against their employer individually. The Court of Appeal decision treating their suits as amounting to a collective dispute was regarded by the supreme court as a mis-interpretation of section 157 (1) of the labour code.

²²³ Appeal No 146/S/02-03 of 10/1/2002.

Unlike an individual or single dispute, the court of First Instance has no jurisdiction over collective disputes. On the contrary, the labour inspector and an arbitration board established in the area of each Court of Appeal has jurisdiction over collective disputes.²²⁴ The competent labour inspector does under sections 158-159 of the code have the jurisdiction to settle collective disputes amicably by drawing up an agreement of conciliation.

The arbitration board is the next tribunal vested with the powers to hear a collective dispute where the conciliation attempt fails. Its jurisdiction which is based on section 162 of the labour code is limited to the issues raised during the conciliation process which has also been reduced into the statement of non-conciliation and matters which had arisen after the statement of non-conciliation. The board's powers for collecting evidence are very wide. The penultimate sentence of section 162 (1) of the code identifies the board powers as including those to make.

“Any necessary investigations of undertakings and trade unions and employer's associations and it may require the parties to produce any document or to provide any information, whether economic, accounting, financial, statistical or administrative which may be useful to it in the performance of its duties.”

The board is expected to deliver an equitable verdict on matters of wages and conditions of employment where these have not been determined by legal provisions, collective agreement or company agreements. The express reference to equity in section 162 (1) of the code is deliberate and intended to ensure that the board eschew technicalities and legalism in the determination of such disputes. This provision is in fact a clarion call for the board's decision to be underpinned by a humane and conscionable approach.

Furthermore, if there were still no agreement on the dispute, the collective labour matter would then be taken to the High Court. Just like in individual disputes, the High Court has jurisdiction to hear and resolve collective disputes. But unlike in individual disputes, the quantum of damages is not considered as a feature to establish the

²²⁴ Section 161 of the labour code

jurisdiction of the High Court. Whether the quantum of damages is below or above five million francs, if there has not been any amicable agreement at the level of the arbitration board the matter will be taken over by the High Court. If at this level, there were still no agreement amongst the parties, it would be taken by the Appeal Court, which has appellate jurisdiction over the labour matters.

Whether a worker involved in a dispute that is collective can abandon the procedure for determining collective disputes and seek to individually pursue his claim as an individual worker, remains an open question. Although this issue has as yet not been dealt with, it seems reasonable to say that this could be done. An individual worker whose salary has not been paid should be able to “request the competent labour inspector” to settle the dispute under section 139 (1) of the code regardless of the fact that any number of other workers were also not paid by the same employer. Section 139 dealing with such individual complaints has not excluded disputes with collective elements from its ambit.

Strikes

The handling of collective disputes which may be criticised as people hostile has made the management of collective labour disputes to invariably result in violent outburst. Section 157(1) of the labour code defines a strike rather interestingly as: “a collective refusal by all or part of the workers of an establishment to comply with the normal labour rules, in order to bring their employer to meet their demands or claims”

Why define a strike by reference to a refusal to comply with labour rules when ordinarily and universally strikes in substance relate to the withdrawal of service by workers²²⁵ not the refusal to comply with labour rules? This definition is all the more strange in the light of the fact that strikes also include a refusal to work at the usual speed or efficiency as expected under a party's contract and the

²²⁵ The view of Lord Wright cited with approval by Prof E E Uvieghara. See E E Uvieghara , *Labour Law in Nigeria* Lagos, 2001 p 445.

notion of work to rule i.e. scrupulous respect of the rules such that the work of the employer rather suffers.

Defining a strike by reference to the “refusal to comply with labour rules” was adopted by a government whose executive mind-set was inclined to presenting workers as rule breakers deserving of little sympathy. This definitional approach set the stage and justification for the strong arm tactics used by the security forces and administrators against striking workers which has become a regular feature of the country’s collective dispute management style over the years.

The conditions set for a legitimate strike can be deduced from a careful review of section 157(1) of the labour code. The provision requires that collective disputes including strikes shall be subject to conciliation and arbitration procedures under section 158 and 164 of the same law. Although the process is a long and winding one, it is mandatory because of the use of the word “shall.” Indeed, the legislation cleared any possibility for doubts about the intendment of the legislator when it stated in the same provision that strikes shall be regarded as legitimate only after the exhaustion of these procedures.

The procedure for resolution of collective disputes

The collective dispute process is regulated by section 158 of the Labour Code. Under it, the labour inspector who is a government officer plays a very influential role. Besides convening the parties for conciliation, he also attempts to bring about an amicable settlement. Crucially, where the process fails, he is the one who prepares a report with the powers to impose the criminal sanctions of a fine “of not less than 50,000 FCFA and not more than 500,000 FCFA.”²²⁶ The potential for industrial instability can be better imagined when this provision is construed in the context of the facts of the Tole Tea

²²⁶ See section 157 of the Labour Code.

privatisation crisis which rocked the South West and North West regions.²²⁷

Apart from the above, the local rules of collective bargaining, particularly the procedure for conciliation have debilitating dilatory schemes built into them. Admittedly, the procedure alternately seeks to achieve a conciliation agreement or an arbitration award pursuant to section 164(1) of the Labour Code. Where however these happens, the aggrieved workers may not be in a position to still enjoy the

²²⁷ Interviews with CDC company insiders had showed that the workers who were deeply suspicious of government had started circulating stories that their union leaders had been compromised. Newspapers commentaries openly ascribed the callousness of the new owners of the company to the protection which they enjoyed from “high quarters.” It may be recalled that an Ad Hoc Committee was set up by the Prime Minister to address the crises. This committee which sat on the 4th of August 2006 recognised that the new owners had terminated the contract of 599 workers within the short time of the privatisation. In spite of these retrenchments, the committee dominated by top government officials without any union representation further “noted the termination of the employment contracts by CTE management for gross misconduct in conformity with article 165(b) of the Labour Code.”

It was apparent to members of this committee that government was somehow acting behind the scene. This explains why article 8 of its report recommended to “the government to favourably consider the case of 331 workers dismissed for an unlawful strike because most of them have been working between 20 and 40 years with the CDC.” Although this committee was subsequent to the violent strikes by the workers, government’s approach though the committee appears to be patterned on a consistent policy of support for the new owners.

In this context, it was plain why the workers had no faith in the conciliation process initiated by the Labour Inspector for Buea assisted by the local Divisional Officer. Government which was a party to the privatisation was through the Labour Inspector and Divisional Officer acting as judges in their own cause. Besides the issue of confidence and credibility, presented by this scenario, the court had in our context disapproved of breaches of fair hearing rules in the cause of the resolution of labour disputes. In *Ngwin Geoffrey V Targbat* the court of Appeal in Bamenda had rejected the views of a disciplinary board because one of its members was a director of the Employer’s Co-operative who had accused the worker of the misconduct which was determined by the board.

practical benefits of any of these awards because of the possibility of delay that are contained in section 164(1) Labour Code.

Firstly, the conciliation agreement awards are subject to publication in an official gazette something which may take months to accomplish in cases where government is disinterested. More devastating however is the fact that the employer may legitimately “institute any proceedings arising out of a conciliation agreement. This provision is an open ended one that gives the employer the possibility of delaying the process for as long as possible.

The provision is rather strange because it does not even identify the nature of the proceedings. What this means is that the dispute may in fact be open to another round of legal actions through the regular courts with an appeal system likely to run for years. This is clearly a disincentive to pursue the legal route to the resolution of collective labour disputes like the Tole Tea’s in favour of a violent industrial out break as occurred in the case under reference. Even awards not challenged are subject to orders of stay of execution on an application made to the labour inspector who as government official are notorious for their pro government partisanship.

Burden of Proof in Labour Matters

Ordinarily, the burden of proof in a civil suit is on the plaintiff on the principle that he who asserts the affirmative must prove it. However, this rule which derives from section 134 (1) of the Evidence Ordinance has no application in labour matters. This rule in ordinary civil cases has in labour action been displaced by section 39(2) and (3) of the labour code. Section 39(3) shifts the burden of proof in labour actions from the plaintiff who often is the dismissed worker to the employer who is generally the defendant in most labour actions. Section 39 (3) states thus:

“In all cases of dismissal it shall be up to the employer to show that the grounds for dismissal are well founded.”

The use of the word “shall” in the above provision shows that this burden is a mandatory one on the employer. It will quite plainly remain so even where the employer was the one who filed the labour

action as plaintiff. Besides, the wordings in section 39(3) of the code above also show that the burden on the defendant is an inflexible one in the sense that it never shifts. The defendant who dismisses a worker is for this reason duty bound to establish by credible evidence the grounds for the dismissal.

Since this burden does not shift to the worker, the common practice during actual hearing at trial courts whereby the plaintiff who is usually the dismissed worker opens the case by testifying, should be put in proper perspective. The plaintiff worker is by the implications flowing from section 39 (2) only limited to establishing the fact of his/her employment and that it had been dismissed. Any attempt to shift the burden to him to prove that his dismissal or termination was wrongful will amount to a patent violation of section 39 (3).

This peculiar procedural principle is consistent with what is enjoined by the International Labour Organization for national governments the world over. Article 9 of the 1982 convention recommends two alternative approaches to the issue of burden of proof in termination of employment cases. The convention recommends placing the burden of proof on a wrongful determination of employment on the employer or for the court or tribunal to decide the issue having regard to the evidence adduced at the trial.

Although Nigerian authorities are usually cited and relied upon as a matter of course in English speaking courts in the South West and North West Provinces, principles derived from cases in labour matters must be scrupulously scrutinized for consistency with this rule on burden of proof in Cameroon. Thus, the view by Wali JSC in *Inezukwe v University of Jos*²²⁸ that the employer does not have to prove the reasons for the dismissal of the employee so long as it is shown that proper notice has been given is no part of Cameroonian labour law. Justice Njie had accordingly held in *Catholic Education Authority v Mary Musono*²²⁹ that the practice at the trial court where the respondent as defendant employer proved the embezzlement

²²⁸

²²⁹ Suit No SWP/L1 /04 – 05

charges brought against the worker was correct. The court after taking this view, reversed the decision of the trial court awarding damages against them.

The nature of the burden created by section 39(3) of the Labour code was exhaustively reviewed in the recent case of *Akamangwa Martin v SONARA*²³⁰. The issue was raised when counsel for the employer curiously rested the defendant's case on that of the plaintiff worker without calling evidence. Referring to the legal consequences of the failure of the defendant to call evidence in proof of the reasons for the dismissal of the worker, Justice Leslie Forbang correctly stated that the defendant had by so doing become bound by the evidence adduced by the plaintiff.

L Forbang J interestingly cited section 39(3) as imposing 'a statutory duty on the defendant in all cases of dismissals.' This duty, in the judge's interpretation, means in effect that irrespective of how well founded the reasons for the dismissal may be, the employer is under a legal obligation to call evidence to establish the wellfoundedness of his decision.' In so finding, the learned trial judge followed a similar procedural principle adopted in *Catholic Education Authority v Mary Musono*²³¹ and *Oyebog v CDC*²³²

Although the decision correctly declares the position of the law as noted above, certain statements by the judge must nevertheless be treated with caution .Reference is here made to the court's view that:

"An important legal consequence from the above is that, once a defendant in a labour dispute rest his case on that of the plaintiff, he invariably is deemed to have admitted the claim .By so doing he is also deemed to have sat on his rights and cannot be heard at law to invoke legal arguments in justification of his claim. Similarly, the courts become estopped from making any inferences on the facts canvassed by the plaintiff."

Although the court admittedly justified this statement by citing the work of the distinguished Professor P.G Pogue, the view cannot

²³⁰ Suit No HCF / L. 011 / 2000 – 2001

²³¹ Supra.

²³² Supra.

be taken as a correct statement of principle with respect to section 39(3) of the code. Section 39(3) of the Labour Code may well require the employer to show that the reason for a worker's dismissal is well founded, but it does not say how the employer may do this. Quite apart from the above, there is no rule of construction that supports the suggestion that a failure to call evidence amounts to an admission by the employer of a worker's claim.

Evidence of the reason for the worker's termination can quite properly be elicited from the worker himself. Such evidence may be established during the cross examination of the worker or by the introduction during cross examination of a damning document in which the worker admits the reasons given for his termination. To suggest otherwise will be rather very strange since counsel for an employer is perfectly at liberty under the rules of evidence to use the worker to show the grounds for dismissal²³³.

Although the labour code was characterized as a composite legislation with its own peculiar proceedings, the code must in our context be construed in a way that respects the rules of evidence. A formal admission made by a worker showing the reason for the worker's termination can legitimately be tendered through him during cross examination. Where this is done, such formal admission shall be binding under section 74 of the Evidence Ordinance such that it will be unnecessary for the employer to call further evidence of it.

It is however difficult to accurately ascertain the significance of the first sentence of section 39 (2) of the code. To say 'the competent court may ascertain the wrongful nature of termination by investigating the cases and circumstances thereof,' is rather striking. While the courts must admittedly have the powers to review evidence and ascribe probative value to it; it is difficult to understand the investigating elements in that statement.

Does this for instance mean that a labour court should go out of its way outside the proceedings in court to pry for evidence with

²³³ Quite apart from the evidence that may be elicited during cross-examination, there is the incontestable fact that the worker could have admitted some damning evidence about the reasons for his dismissal.

which to decide a case? While it is from a literal reading of the sentence possible to assume that this is the case, to suggest that this is the intention would be absurd for the obvious reason that it would be fundamentally inconsistent with the nature of judicial proceedings generally.

Although the code has not said so, it is obvious that the standard of proof is on the basis of the preponderance of evidence like in other civil actions. This conclusion is consistent with the general practice of the labour courts in the country. Indeed in *Ndaka Gabriel v Mutual Social Insurance Fund*²³⁴ the court of appeal following the principle expressed here adopted general law principles to dismiss a labour appeal which was filed at the Court of Appeal rather than at the registry of the trial court. It is for the same reason that a labour action in which a worker is dismissed for a misconduct amounting to a criminal offence has to be proved beyond reasonable doubt.

This point was taken in the Buea Court of Appeal decision of *Victor Oyebug v CDC*²³⁵ in which the defendant dismissed a worker for amongst others the falsification of a consignment note. In resolving the argument by the appellant that this issue raised a criminal allegation which must be proved beyond reasonable doubt Justice Njie stated thus:

“We must give respect to the view expressed by counsel for the appellant that proof of fraud as alleged against the appellant ought to be beyond reasonable doubts. The law is that the respondent having raised the issue of falsification of the consignment note by the appellant, the burden was on them to prove that assertion and the standard of proof is proof beyond reasonable doubt.”

The court however quite rightly rejected the further argument that such proof can only be attained after the worker is tried and convicted by a criminal court. Although this later contention is good law in Nigeria, the court of appeal disagreed with the principle. In doing so, the court relied on s 39(2) of the code which clearly gives a labour court in Cameroon the jurisdiction to ‘ascertain the wrongful

²³⁴ Suit No CASWP / L19 / 2002.

²³⁵ *Supra*.

nature of the termination of a workers employment, by investigating the causes and circumstances of the termination.'

Labour Appeals

A labour decision can be challenged on appeal by either party to the action in the same way as every other judgement. Labour appeals are regulated by both the labour code and the ordinary provisions of the law on appeals in the country. With regards to the former, section 154(1) of the Labour Code has created and vested the parties in a labour action with the right of appeal.

Under this provision, a party dissatisfied with the judgement of a labour court at the trial has as of right fifteen days to appeal against the judgement. Time to appeal under this provision starts running from the date of the pronouncement of the judgement in the case of a full hearing or from the date of service of the decision where the judgement was giving by default²³⁶.

The problem which has however often arisen in labour appeals is the procedural issue associated with the place for the filing of the appeal. This problem emanates from the non-specificity of section 153 (1) of the code which simply provides that an appeal may be lodged without indicating where this filling should be done. There are a variety of courts of appeal decisions which have held that this silence amounts to a lacuna that can be cured by a resort to the provisions of section 156 of the same code.

By the provision of section 156, all procedural matters not covered by the Labour Code have to be dealt with in accordance with ordinary law provisions. The rules of ordinary law would vary depending on whether the appeal is from the Magistrate/High courts or from the Court of Appeal as the case may be. These rules were in the case of the Court of Appeal identified as the Federal Supreme Court Rules 1961.²³⁷

²³⁶ Section 154 of the labour code.

²³⁷ See Order 7 of this Rules. See also Mbeng JCA in *S. N. E. C v Gerge Same* Kumed Suit No CASWP/ L.4/2001 Unreported.1

Based on this adjectival principle, the court of appeal has insisted that labour appeals must be filed in the registry of the lower court which delivered the decision. In *Ndaka Gabriel V National Social Insurance Fund*²³⁸ Njie JCA held quite correctly that the appellant further grounds of appeal filed at the registry of the court of appeal were incompetent. This procedure of filing appeals in the registry of the court that delivered the decision was considered so foundational that the fact that the ill-fated further ground of appeal was headed “In the High Court of Ndian Division, Holden in Mundemba” was ignored as irrelevant.

The Court of Appeal via Njie JCA emphasised the point that :

“The principle of law which this court has reiterated on several occasions is that a party desirous to appeal against a judgment must lodge his notice and grounds of appeal in the registry of the trial Court. In Labour Suits Section 154(1) of our Labour Code ordains that such notice and grounds of appeal be filed within 15 days after the decision of the trial Court. Even in cases where a party indicates his intension to file further grounds of appeal, upon receipt of the record of proceedings, such additional grounds of appeal are filed in the registry of the trial Court.”

The only exception where appeals may be filed in the appellate court is the rear one by which an appeal could be filed with the leave of the court of appeal itself. To get such leave, appellant must file a motion on notice with affidavit evidence explaining why the appellant is unable to lodge the appeal in the relevant trial court.

A labour appeal may like every other appeal be on a point of law, facts or mix law and facts as the case may be. Since an appeal is a complaint about an error by the lower court, it is crucial that the appellant not only establishes the error of the trial court, but also shows in what way the error has resulted in a miscarriage of justice. An error of the trial court which did not cause a miscarriage of justice

²³⁸ Suit No CASWP/L9/2002 Unreported. See also *Union Cameroun de Brasseries v Baiye Afue Joseph* Suit No CWSP/L.17/ 2000. This is an unreported decision by the same court stating that under our “rules of procedure if a ground of appeal alleges an error or misdirection or error in law should be stated.”

in the sense that it did not cause any prejudice to the appellant is academic and immaterial.

What is an appeal on a point of law or fact? It may be necessary to elaborate on this issue because many decisions have been lost on appeal because of poor appreciation of the distinction between an appeal on a point of law and one on a point of fact resulting in inarticulate formulations of grounds of appeals. In fact, the Court of Appeal and the Supreme Court have consistently decried such poor formulations of grounds of appeal in labour actions.

In *Catholic Education Authority V Atem Mary Musono*,²³⁹ reacting to a ground of appeal which stated simply that “the decision of the learned trial magistrate is erroneous in point of law”, the Court of Appeal Buea lamented the worthlessness of such a ground of appeal. Njie JCA in a unanimous decision of the panel stressed the absolute necessity for a ground of appeal to contain its particulars noting that anything less inevitably results in the ground being struck out. It is thus trite law that a ground of appeal in all cases²⁴⁰ must allege the error of law complained against as well as state the particulars of the error preferably in separate paragraphs. The failure to identify the particulars of the errors complained of is fatal.

With regards to our initial question of “what is a point of law”, it is to case law that we must turn for the definition of a point of law. *Abbey v Alex*²⁴¹ which presents a classical discourse on the nature of a point of law, regards it as a challenge on a question of law which generally speaking is capable of three possible meanings. These meanings were identified as:

* It could mean a question the court is bound to answer in accordance with a rule of law. This excludes the exercise of discretion in answering the question as the court thinks fit in accordance with what is considered to be the truth and justice of the matter. Concisely stated a question of law in this sense is one predetermined and authoritatively answered by the law;

²³⁹ *Supra*.

²⁴⁰ Civil and criminal.

²⁴¹ (1991) 6 NWLR 459.

* The second meaning is as to what the law is. In this sense an appeal on a question of law means an appeal in which the question for argument and determination is what the true rule of law is on a certain matter. The question of law in this sense arises out of the uncertainty of law. A question of the construction of statutory provision falls within this meaning;

* The third meaning is in respect of those questions which are committed to and answered by the authority which normally answers questions of law only. Thus any question which is within the province of the judge instead of the jury is called a question of law, even though in actual sense it is a question of fact. The cases which readily comes into this category are the interpretation of documents, often a question of fact but is within the province of a judge and also the determination of reasonable and probable cause for a prosecution in the tort of malicious prosecution which is one of fact, but is a matter of law to be decided by the Judge.

This definition is so comprehensive that it is difficult to add to it. A ground of appeal that does not raise elements reflected in any of the above possible meanings cannot be said to be on a point of law and would be treated as a ground of appeal on a point of fact.

The nature of an appeal on point of fact was also discussed in the *Abbey V Alex*²⁴² case with reference to the idea of a question of fact. A point of fact was in the same decision defined in connection with the issue of a question of fact as involving three possible definitions thus:

- *. any question which is not determined by a rule of law;
- *. any question except a question as to what the law is;
- *. any question that is to be answered by the jury instead of by the judge.

The court also went ahead and distinguished between a question of law and that of fact. This distinction the court noted, lies in the fact that “matters of fact are matters, circumstances, acts and events which in legal controversy are determined by admissions or by

²⁴² Supra.

evidence as distinct from matters of law which are determined by authority and argument”²⁴³.

Establishing a clear distinction between law and facts for the purpose of appeals assumes increased importance in appellate actions in the Supreme Court. This is so because of the Supreme Court’s practice of consistently declining to entertain appeals which in substance require it to review the facts and merits of the judgement appealed against. This practice was typically illustrated in *Manga Amougou Luc V SODECOTON*²⁴⁴. The appellants who were aggrieved by a labour judgement of the Court of Appeal of the North region filed an appeal challenging the decision in the Supreme Court. The grounds of appeal alleged the violation of section 39 of the Labour Code amongst others.

The court after pointing out that it was by its practice confined to a consideration of only appeals on issues of law dismissed the appeal. The court indicated that the appeal was brought under the pretext of a violation of the law in order to cause the Supreme Court to appreciate the facts of the case. This decision is a schematic one which must be criticised for being difficult to follow. For one, a ground of law cannot realistically be completely unconnected to the facts of the case as suggested by the Supreme Court. Besides, it is clearly impossible in certain cases for an appellant to demonstrate that the law has been violated without making reference to the facts to buttress this conclusion.

Further Evidence on Appeal

An incidental question which interestingly cuts across all appeals is whether either party to a pending appeal can call additional evidence to buttress their case in a labour appeal. This issue was neatly raised in *Omog Ettiene v Cameroon Airlines*²⁴⁵. This was an application by the applicant for leave to adduce further evidence on

²⁴³ See page 472 paragraph b of the decision in *Abbey v Alex* (Supra)

²⁴⁴ Supra.

²⁴⁵ CASWP/L22/2004/IM/04 Unreported.

appeal. The substantive matter itself was a labour appeal in which the applicant wanted to tender a document showing that he was refused a job because of the absence of a certificate of service. He also sought to tender two statements of non-conciliation as well.

On these facts, M. A. Mbeng JCA rejected the application for further evidence on appeal. In doing so, the erudite Justice identified the principle upon which such applications could be granted thus:

“The circumstances which this court will grant leave to a party to adduce additional evidence is when the evidence concerning the matters have occurred after the date of the trial or hearing of the suit in court. Apart from this, leave can only be granted on special grounds”

Following this rule, it was held that “since the documents were known by the applicant at the trial” his failure to call evidence of them was fatal. The statement of non-conciliations Mbeng JCA noted were irrelevant since there are equivalent to pleadings and not evidence as such. Although the decision did not address what will amount to a special ground, it is apparent that this will depend on the peculiar facts of each case. Suffice it to say that evidence which is crucial and certain to substantially affect the appeal stands an excellent chance of being allowed in on this heading.

Provisional Execution of Labour Judgements

It is well possible for the judgement creditor in a labour action to enforce certain parts of the awards in a judgement irrespective of the filing of an appeal. Section 146 of the labour code provides a general power for a labour court to order the immediate execution of parts of the awards of a labour judgement notwithstanding any motion for a stay of execution or any appeal. This award which could be made suo-moto is generally referred to as an order of “provisional execution”

The provisional execution order is a departure from the peculiarly Cameroonian principle by which the sheer filing of an appeal in civil cases automatically operates as a stay of the execution of the judgement appealed against. The procedure which allows for the

making of orders of provisional execution is striking and commendable for its similarity with what obtains under Anglo-Nigerian law. The provisional execution route accords with the foundational principle of law that a judgement creditor is entitled to the fruits of the judgement. It is a welcome departure away from the general practice where the court has been made largely irrelevant because of the obnoxious rule that an appeal stays the execution of a civil judgement.

It is indeed difficult to see how any serious foreign investor would invest in a country where court decisions can be casually frustrated by the filing of a simple ground of appeal raising the usual omnibus ground. The possibility to award provisional execution orders in labour matters is consistent with the principle requiring that a judgement creditor be allowed to execute his judgement regardless of the filing of an appeal by the judgement debtor. This principle is a product of the sound principle that the judgement is valid and correct until set aside on appeal.

Although section 146 identifies the kind of awards recognised as wages and prerequisite indisputably due, the provision prescribes that the details and condition for their award has to be fixed by a statutory instrument. The statutory instrument referred to is law No 92/008 of 14 August, 1992, which sets out the details of the principles regulating the enforcement of Court judgements including, of course, Labour actions.

Section 3 of this law states amongst others that a court seized of a matter concerning the payment of salaries, wages and leave allowances due, may, in case of a judgement delivered after full hearing or considered to have been delivered after full hearing, order the provisional execution of the judgement regardless of an appeal. The order of provisional execution, must to be competent, adhere scrupulously to the provisions of section 3 above. Firstly, it is from a plain interpretation of this provision clear that an order of provisional execution cannot be made except where the judgement is on the merit. An order of provisional execution cannot be made to enforce an award in a default judgement.

Secondly, it has to be established that the award relates to “salaries, wages and leave allowances due” before an order for provisional execution can be made. The incontrovertible position is that provisional execution cannot be ordered for salaries, wages or leave allowances which have not become due. A labour court is certainly not at liberty to award claims for salaries and wages which are prospective since such an award cannot by the terms of section 3 be the subject of an order for provisional execution.

This statutory position was affirmed by the Supreme Court decision in *University of Buea V Mbua Teke Daniel*²⁴⁶ where the trial high court in Buea had found for the plaintiff worker and awarded him the sum of 5,214, 420 francs amongst others. This particular award was for the worker’s wages for the four years of service for which the worker would have worked had he been allowed to reach the retirement age of 60 years. The trial court ordered provisional execution of this amount regardless of any appeal and the order of provisional execution was confirmed by the South West Court of Appeal. The Supreme Court held however that the order of provisional execution in the circumstances of the facts of the case “did not fall within the ambit of section 3 of law No 92/008/of 14 August 1992”²⁴⁷.

In reversing both courts, the Supreme Court justified its decision on the basis that these salaries were not already earned but “in futuro, covering as they did the four years period between the date of his forceful retirement at age 56 and the statutory retirement age of 60 years.” It is obvious from this decision that provisional execution can only be ordered where the award are for wages, salaries or allowances which has become indisputably due.

Apart from the fact that wages must become due before the order may be made, provisional execution is further subject to the principles indicated in *Harp Distribution Services v Nfonba B*

²⁴⁶ Supra.

²⁴⁷ These were the views that formed the basis of this decision. See folio 6 of the complementary report by Justice Epuli. However the appeal was declared inadmissible because it was filed after the 15 days limit for the filing of labour appeals.

Joseph²⁴⁸. M A Mbeng JCA clearly identified these further principles as follows:

Where the amount awarded is less than 600.000FCFA without a surety by virtue by a Prime Ministerial Decree No 93/754/PM of 15/12/1993.

Where the award is more than 600.000FCFA the judgement debtor must furnish a surety.

Where the amount awarded is more than 600.000FCFA the court may still order provisional execution provided the award relates to salaries and prerequisites not contested or disputed.

The court however was rather firm in the view that neither notice to pay, severance pay, medical bills and allowance in lieu of salary were “part of a salary or a prerequisite or an accessory to a wage or salary.”²⁴⁹ Proceeding from the premise that these items were neither salary nor accessory to it, the court stayed the execution of the provisional execution for awards made covering them.

No reference was however made to the impact of the new Uniform OHADA rules on the application to stay. This silence though regrettable, is nevertheless, understandable since neither party to the proceedings raised the issue either at the trial court or on appeal. Yet, it has for the purpose of completeness to be noted that labour judgements and enforcements are definitely subject to the general provisions of the Uniform Acts dealing with enforcement measures in Cameroon. It cannot in fact be expected to be otherwise.

B Martor et²⁵⁰ al has identified the enforcement measures created under the Uniform Act as falling into two broad categories viz (a) the provisional measure whereby a creditor can secure a debt pending a final judgement on the merit and (b) measures of execution whereby a creditor can enforce a judgement against the assets of his debtor. While it is a compelling fact that the first scenario has no application

²⁴⁸ Suit No BCA/1LM/2008 Unreported.

²⁴⁹ The court held that house allowance, seniority bonus and transport allowance are perquisite while describing payment in lieu of notice and severance pay as damages awarded to a deserving party in a termination of employment suit.

²⁵⁰ B Martor et al *Business Law in Africa: OHADA and the Harmonization Process* London 2002: 231.

with regards to labour decisions, the same conclusion cannot be reached with the second.

A labour judgement is certainly an enforceable right on the basis that it is “a court decision which has been declared enforceable” as defined by Article 33 of the Uniform Acts.²⁵¹ This being the case, it is subject to the Uniform Acts and in particular the OHADA rules on the stay of execution. The commencement of the execution of a labour judgement may take the form of the seizure of the goods of the judgement debtor under Article 49 or the attachment of his funds pursuant to Article 104 of the Uniform Act.

Article 104 has created a regime under which the judgement debtor can within 15 days object to the seizure of his funds or asset by way of an application presumably in the court that ordered the enforcement. The court under this procedure “may either order payment to be made to the creditor or refund of the funds to the debtor...” It is plain from the penultimate sentence of Article 104 that the court can stay the execution of the judgement by an order that the seized assets be returned to the judgement debtor.

The stay is a function of the OHADA Uniform Acts and not the usual legislation on appeals as it will appear from some of the decisions above. The court in staying a decision under Article 104 can in the alternative order the funds of the debtor to be held by a third party pending the final outcome of the enforcement proceedings. There are no hard and fast rules regulating stay of enforcement under the new OHADA approach as the matter is largely left to the appreciation of the judge who must however act judiciously in the interest of justice.

However, and as it would be expected by the demands of a just system of the administration of justice, a judicious exercise of this discretion should of necessity prioritise the fact that a judgement creditor should not be casually deprived of enjoying the benefits of the judgement. Equally important on the other side of the pendulum is the fact that a patently irregular decision should not be speedily enforced.

²⁵¹ B Mator et al op cit at 232.

It seems obvious that OHADA rules have further weakened the capacity of a judgment creditor who is most likely to be a terminated worker to enforce decision given in his favour. It must to this extent be criticised for further weakening the already poor security of service in the country. This all the more so, as objection to enforcement are themselves proceedings which are subject to the full appellate procedure in the country's legal system.

Introduction

The Labour Code recognises the right to form trade unions but fails to define what a trade union is. In doing this, the legislator apparently assumes that the idea of trade unions is so commonplace that it was not necessary to define the concept. However, the local realities and studies from other jurisdictions have shown that this assumption is misplaced. E.E Unvieghara²⁵² has accordingly pointedly noted that “there is often a misconception of the real notion of a trade union”

The writer further lamented how some persons wrongly regard groups such as student unions, association of market women as well as militant organisations as trade unions. It is in the light of these misconceptions imperative to define a trade union as understood in strict labour law parlance. To do so, we must in the absence of a statutory definition inevitably turn to academic writers for a definition of the concept.

E.E. Uvieghara relying on the relevant legislation in Nigeria which is largely similar to the labour code in Cameroon has defined a trade union as:

“any combination of workers or employers, whether temporary or permanently, the purpose of which is to regulate the terms and conditions of employment of workers, whether the combination in question would or would not, apart from this Act be an unlawful combination by reason of any its purposes being in restraint of trade and whether its purpose do or do not include the provisions of benefits for its members.”

²⁵² E.E. Uvieghara *Labour Law in Nigeria* Lagos, Malthuse House Press Ltd 2001:314

The first part of this definition reflects the universally recognised nature of trade unions which is also captured by section 3 of the Labour Code of 1992. This provision recognises the right of “workers and employers set up freely without authorisation (trade unions or employer association) for the study, defence, promotion and protection of their interest particularly those of an economic, industrial, commercial, cultural and moral advancement of their members” From the academic and statutory definitions herein, it is apparent that a trade union has two definitive elements. Both regard a trade union as (i) a combination of workers or employers (ii) for the purpose identified in section 3 of the code.

Dealing with (i) above, it needs to be noted that section 3 of the labour code states that the combination could be of workers or employers. Having so specifically indicated that a union could be of either employers or workers, there is no basis for the common parlance view that suggests that trade unions are limited to a combination of workers only²⁵³. Such a view is for the avoidance of doubt erroneous.

However, it is important to call attention to the salient point which can be gleaned from section 3-5 of the labour code that workers and employers cannot combine to form a union. Sections 3-5 of the labour code have followed the traditional trend in recognising the rights of both workers and employers to form and belong to distinct trade unions of their choices.

The interesting question here is that connected to whether a trade union can be set up without prior registration. What does the phrase “without prior authorisation” as used in section 3 mean? Does it suggest that workers or employers can on their own combine and without more begin operating as a trade union or employer’s association?

²⁵³ The USPAC (Union des Syndicats Professionnels Agricole Forestière et Activités Connexes du Cameroun) and WCEA (West Cameroon Employers Association) are employers’ associations in this mould. The former, involves employers in the agro based sector while the latter groups employers from all sectors of the economy in the former West Cameroon.

There are two possible constructions to be given to this phrase in section 3. The first possibility is that it could be contended that section 3 intends exactly what it says. It is from this premise, therefore, legally permissible for a trade union to go operational after its formation by the members without the necessity of registration. This view is supported by the further argument that the legislator deliberately enacted this provision to bring Cameroonian labour law in line with the country's treaty obligations.

Cameroon, it has to be noted, is a member of the ILO and thus required to give effect to the organization's conventions requiring states to allow workers and employers to freely set up trade unions. This interpretation also enjoys constitutional support because section 45 of the 1996 Constitution as revised has made treaty obligations superior to domestic law in event of a conflict. Besides, the preambular provisions of the 1996 constitution providing complete freedom to form and belong to trade unions²⁵⁴ also accords with the present interpretation.

The decision is also regrettably at variance with international precedent on the point. It was held by the ILO tribunal in *SYNES v The Government of Cameroon*²⁵⁵ that the government was in breach of her treaty obligation when it insisted that the union was not legal because it had not been officially registered under the country's domestic legislations. It also discountenanced the government's argument that the union was involved in political activities. This case is rather revealing as the tribunal expressly recommended that the country revise its laws particularly those requiring pre-registration of a union by the government such as section 6(2) of the Labour Code. Although this authority was not cited to the trial judge in the Dorothy Njeuma's case, the decision in the case would still appropriately be considered as having been given *per incuriam*.

The alternative view is that which argues that the legislator did not intend such a literal interpretation. Proponents of this position point at section 8 and 11 of the Labour Code which explicitly

²⁵⁴ See section 3 and 4 of the labour code.

²⁵⁵ Case 1699 pp516-551

indicates the procedures for the registration of trade unions as well as describing the procedure for the registration of trade unions respectively as the basis of this conclusion. That trade union must be registered before they operate is according to this interpretation conclusively settled by section 13 of the Labour Code. This provision recognises the right of the registrar of trade union to refuse to register a trade union, which refusal has to be “notified in writing within thirty days” to the applicants with the reasons thereof..

A more compelling argument that registration is imperative before a union can become valid and functional is that based on section 6 of the Labour Code. This section positively declares that “a trade union or employers association shall not have legal existence until the day on which a certificate of registration has been issued to it by the registrar.” Indeed, subsection 2 of this provision menacingly warns “any person forming a trade union or employers association that has “not yet been registered and who acts as if the said union or association has been registered” with a threat of criminal prosecution. Although this was not expressly stated, it is plain that the Buea High Court decision in *SYNES Vs Dr Dorothy Njeuma*²⁵⁶ which was confirmed by A K Nana JCA that the plaintiff did not prove that it was a registered union was predicated on the principle in section 6 of the Labour Code.

Purpose of a Trade Union

Section 3 of the Labour Code sets out the purpose for which a trade union may be registered. A trade union shall by this provision be registered for “the study, defence, promotion and protection” of the interest of workers or employers. This interest must by the terms of the same section exclusively be “of an economic, industrial, commercial or agricultural nature” and intended “for the social, economic, cultural and moral advancement of their members” While it is conceded that a trade union cannot under section 3 of the

²⁵⁶ HCF/

Labour Code be set up to engage in political activities, it is difficult to see what else is excluded under the rather liberal tenor of section 3.

The use of the phrase “cultural and moral advancement of their members” is definitely wide enough to cover a wide range of purposes not normally considered as falling within the traditional objectives for which trade unions are set up. It is thus possible from a literal interpretation of the phrase “cultural and moral advancement of their members” to argue that a trade union may be set up by workers from a particular ethnic group to study and protect their tribal interest. A similar interpretational slant will permit the idea that workers of a particular denomination can register a religious trade union to protect issues of their “moral advancement.”

It is apparent from the rather elastic nature of section 3 of the Labour Code that the notion of a trade union is capable of an expansive meaning in Cameroon. Although these issues are not yet the subject of any authoritative judicial pronouncement in the country, it is doubtful whether the Nigerian case of *Re Union of Ifelodun Timber Dealers and Allied Workers*²⁵⁷ on the objects of trade unions is acceptable precedent in the context of section 3 of the Labour Code. The Nigerian Court of Appeal had in this case held that the association could not be registered because, amongst others, it was formed for the protection and expansion of the business of all persons in the timber trade.

Registration of Trade Unions and Employer's Associations

The legal existence of a trade union is traced to the date of the union's registration²⁵⁸. Under our local laws, a trade union is in this respect similar to a company since both acquire juristic personality from the day on which the certificate of registration has been issued. It is from section 6 of the Labour Code important for officials and members of trade unions and employers association to insist on the

²⁵⁷ (1964) 2 ALL NLR 63.

²⁵⁸ See section 6 of the labour code.

issuance of a certificate of registration by the registrar of trade unions before the union commences its operation.

This caution is prudent because section 6 (2) of the labour code warns of the possibility for the prosecution of any person in a proposed trade union or employers association that has not been registered “who acts as if the said union or association has been registered.” This criminalisation of pre-registration activities by promoters of trade unions and employers associations is strange. It is also quite clearly contrary to the provisions of Art 5 of ILO convention 87 which gives workers and employers the freedom to establish and join unions of their choice. In *SYNES v The Government of Cameroon*²⁵⁹, the same union successfully sued the government of Cameroon for failing to recognize it as a union and harassment of its members. The union relied on its application for registration as the basis of its existence which incidentally was the same argument it advanced in her counter affidavit in *SYNES v Dr Dorothy Njeuma*²⁶⁰.

Although section II of the labour code sets out the broad procedure for the registration of trade unions, it is section 8 of the labour code that prescribes the detailed formalities for the registration of trade unions and employer’s associations. Under section 8 the application for the registration of a trade union and employer’s association must be signed by at least 20 members of the union if it is a workers union and by at least 5 members where it is an association of employers.

In practice, the officers of the proposed union would normally convene a meeting where the rules of the union are written and adopted and the officers elected. The registration proper begins with an application to the registrar of trade unions and employers association. This officer is a civil servant appointed by Decree and operates in the Ministry of Labour and Social Insurance in Yaoundé. The application must be accompanied with two copies of the rules of the union and a list of the officers of the proposed union.

²⁵⁹ International Labour Organization Administrative Tribunal Case No 1699.

²⁶⁰ *Supra*.

On depositing the application, the registrar issues a written receipt of acknowledgement of the application. The registrar has one month to examine the application and reach a verdict on whether the union or employer's association is going to be registered or not. The receipt of acknowledgement is by the warped Cameroonian practice not regarded as evidence that the union has been registered hence cannot be considered as authority for the union or employer's association to start operating. The Buea Court of Appeal had thus held in *SYNES V Dr Dorothy Njeuma*²⁶¹ that the production of a receipt indicating that an application was made by the union was not evidence of registration.

Justice A K Nana's decision in this case patently conflicts with an ILO decision recognising SYNES as a legitimate union in Cameroon and advising Cameroon to align its laws and practice with ILO standards. From a purely technical perspective, this case demonstrates a striking lack of depth of analysis and a strange pattern of legal reasoning. It is difficult to appreciate the panel's argument that "in the writ filed in the court below the plaintiff merely alleged that they were a trade union" when it is trite law that pleadings are not supposed to plead the evidence by which factual allegations may be established at the trial. If an allegation of fact was made by the appellant that it was a trade union as the Court of Appeal itself acknowledged above, it ought to follow that an Order 28 Cap 211 application must proceed on the basis that the plaintiff is a trade union as alleged.

It is striking that A K Nana JCA conveniently ignored the solid submission in favour of the appellant that by the tenor of the Supreme Court decision in *Alhaji S Katagum & Another v M E K Roberts*²⁶² 1967 the allegation in the pleadings must be treated as true **and provable** in an order 28 application. It is difficult to ascertain to what extent this decision is a reflection of the fact that the defendant was described by her counsel during argument in the lower court as a politburo member of the ruling party and senior citizen, what

²⁶¹ CASW L.11 2007M 2008 Unreported.

²⁶² All N L R 137.

however is certain is the fact that ILO standards are undermined by bureaucratic and judicial support for government position of hostility towards independent trade unions.

What if the Registrar refuses to register a Trade?

The next issue to be considered is what if the registrar refuses to register the union after the members have objectively satisfied the pre-requisite conditions for registration? The answer to this question must be prefaced with the advice that it is invariably better for the registration of trade unions to be handled by professionals particularly legal practitioners. Turning to the answer proper, where the registrar declines to register, he is in such a situation obliged pursuant to section 12(1) and 12(2) of the labour code to notify the applicants in writing of the refusal and his reasons for doing so.

The applicants can as of right challenge the registrar's refusal to register the union or employer's association in court. Such a challenge could in fact be brought under section 14 of the Labour Code by persons "feeling aggrieved by a decision of the registrar to refuse" registration. The same provision also gives those concerned the powers to challenge the registrar's decision to cancel an existing union or association in court.

Section 14 inevitably raises the issue of determining the court to which such a challenge may be made. Is such a challenge made in the labour court or the regular courts? It is possible from a casual and uncritical review of the labour code to argue that such a challenge should be made in the labour court created by section 133 of the code. This conclusion could be supported by the argument that section 1(1) of the code implies exclusivity in the management of labour matters.

Such exclusivity according to this view means that all the relationship about labour issues must in event of a dispute be determined in accordance with the explicit provisions of the Labour Code itself. By this reasoning, the labour court which is a creation of the code must handle all matters with labour incidents.

Attractive as this may seem at first sight, such a conclusion is untenable because it would lead to absurd results. It will, for instance, require that the officials of a union which has been refused registration seek conciliation with the labour inspector who incidentally works as a subordinate of the registrar in the same ministry. Were these to be the case, the registrar will be indirectly acting as a judge in his own cause. The legislator will not have intended such an absurd result.

The correct view in the circumstances is that complaints about the registrar's refusal to register a union or association or cancellation of an existing union or association should be taken before the regular high court. This conclusion is predicated on the fact that the registrar's decision to refuse registration and or cancel the registration of a trade union or employer's association is a ministerial act. Thus conceived, it follows naturally that it falls within the undoubted jurisdiction of the high courts under section 18(1) of law No 2006/15 of 29th December, 2006 on Judicial Organisation.

This is so as the second sentence of subsection 1(c) of this section vests on the high court the competence to:

“hear and determine all applications for an order commanding any person(s) or authority to do or perform any act which he is required to do by law.”

The refusal of the registrar to register a union or association is clearly an act which he has authority to perform. A failure to perform it would for this reason be compelled. Besides, the Supreme Court had held in *Kuma Ndumbe* case²⁶³ that complaints about ministerial acts go to the regular courts even where as in the above author they were based on issues related to labour administration.

Status of Trade Unions

Section 17 of the Labour Code simply asserts that “trade unions and employers association shall enjoy legal status” without defining what this status is. It is necessary for this status to be defined. To do

²⁶³ Supra.

this, recourse has to be made to a review of other provisions of the labour code in relation to case law decisions from other jurisdictions since the latter are persuasive authorities in our courts.

Traditionally, on registration a trade union assumes the status of a juristic personality with powers to sue and be sued. Yet, it has to be noted that this has not always been the case. It was for instance held in earlier decisions that a trade union is not a legal entity. Betuel J had following this line of reasoning held that “the union is a quasi- juristic person” and not a juristic person as known in strict legal parlance. This view suggests that a trade union is a juridical rather than a juristic personality.

However, the recent trend is that which regards the trade union as a juristic person. It is in this light that the Nigerian Supreme Court apparently following the position in England noted obiter in *Nigeria Nurses Association V AG of the Federation*²⁶⁴ that a trade union has the traditional legal personality. Under our code, it can be safely concluded that the position is similar to the status giving to trade unions in Anglo-Nigerian law as stated in the above case. Indeed, it is plain from the second sentence of section 17 of the Labour Code that a trade union is a juristic person.

The sentence under reference clearly states that trade unions “shall have the right to go to law and to acquire movable property.” Although this is a rather clumsy manner of addressing the issue, it is perfectly logical to interpret this sentence in section 17 of the code as amounting to recognition that the trade union is different in law from the members forming it. This distinction is a major feature of the concept of juristic personality²⁶⁵. Furthermore, section 18 of the Labour Code strengthens this view by conferring on unions the right to act in court on behalf of their members in civil and criminal matters. The provision also significantly describes the union as acting in a manner similar to civil action plaintiffs in criminal matters. From a reflective interpretation of these provisions, it cannot be doubted that trade unions have juristic personality.

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The Labour Code

The Labour Code

Law No. 92-007 of 14 August 1992

On the Labour Code

The National Assembly deliberated and adopted; The President of the Republic hereby enacts the law set out below:

Title One

General Provisions

Section 1: (1) This law shall govern labour relations between wage-earners and employers as well as between employers and apprentices under their supervision.

In this law, “worker” shall mean any person, irrespective of sex or nationality, who has undertaken to place his services in return for remuneration, under the direction and control of another person, whether an individual or a public or private corporation, considered as the “employer.” For the purpose of determining whether a person is a worker, no account shall be taken of the legal position of employer or employee.

This law shall not apply to staff governed by:

The General Rules and Regulations of the Public Service;

The Rules and Regulations governing the Judicial and Legal Service;

The General Rules and Regulations governing Servicemen;

The Special Rules and Regulations of the National Security;

The Special Rules and Regulations of Prison Administration civil servants;

The Special provisions applicable to auxiliary staff.

Section 2: (1) The right to work shall be recognized as a basic right of each citizen. The state shall therefore make every effort to help citizens find and secure their employment.

Work shall also be a national duty incumbent on every able-bodied adult citizen.

Forced or compulsory labour shall be forbidden.

“Forced or compulsory labour” shall mean any labour or service demanded of an individual under threat of penalty, being a labour or service which the individual has not freely offered to perform.

However, the expression “forced or compulsory labour” shall not include:

1) Any work or service exacted by virtue of compulsory military service laws and regulations for work of a purely military nature;

2) Any work or service in the general interest forming part of the civic obligations of citizens as defined by the laws and regulations;

3) Any work or service exacted from any person as a consequence of a conviction in a court of law;

4) Any work or service exacted in cases of force majeure, that is to say, in the event of war, disaster or threatened disaster, such as fire, flood, severe violent epidemic or epizootic diseases, invasion by animals, insects or plant pests, and in general, any occurrence that would endanger or threaten to endanger the existence or the well-being of all or part of the population

Title II

Trade Unions and Employers' Associations

Chapter I: Purpose of Trade Unions and Employers' Associations and Their Establishment

Section 3: The law recognises the right of workers and employers, without distinction whatsoever, to set up freely and without prior authorization (trade unions or employers' associations), associations for the study, defence, promotion and protection of their interests, particularly those of an economic, industrial, commercial or agricultural nature, and for the social economic, cultural and moral advancement of their members.

All activity by such unions and associations which is not connected with the furtherance of the above objectives shall be prohibited.

Section 4: (1) Every worker and employer shall have the right to join a trade union or employers' association of his own choice in his occupation or kind of business.

(2) Workers shall be protected from:

(a) any acts of anti-union discrimination in respect of their employment;

(b) any practice tending: to make their employment subject to their membership or non-membership in a trade union; to cause their dismissal or other prejudice by reason of union membership or non-membership or participation in union activities.

(3) Any act contrary to the provisions of this section shall be null and void.

Section 5: (1) Workers' and employers' organizations shall have the right to draw up their constitutions and rules, to elect their representatives freely and to organize their administration, provided they respect the laws and regulations in force.

(2) Workers' and employers' organizations shall be forbidden to interfere in each other's activities.

Section 6: (1) A trade union or employers' association shall not have legal existence until the day on which a certificate of registration has been issued to it by the registrar of trade unions and employers' associations.

(2) Any person forming a trade union or employers' association that has not yet been registered and who acts as if the said union or association has been registered shall be liable to persecution.

(3) The registrar of trade unions and employers' associations shall be a civil servant appointed by decree

Section 7: (1) No one shall be a member of a trade union unless he is in fact gainfully employed at the time of his joining it.

(2) However, a person who has ceased to be gainfully occupied may continue to be a member of his trade union, provided:

1. he has carried on his occupation for at least (6) six months; and
2. he is engaged in union activity or is appointed by virtue of his occupation to a post for which provision is made by laws and regulations.

Section 8: Every application for registration of a trade union or employers' association shall be signed by at least 20 members if it is a workers' union or at least 5 members if it is an employers' association. The rules of trade unions and employers' and employers' association shall comply with the provisions of this law.

Section 9: The form under which trade unions or employers' associations shall be set up in order for them to be registered shall be fixed by decree after the recommendation of the National Labour Advisory Board.

Section 10: (1) The persons applying for registration of a trade union or employers' association and the members responsible for its

administration and management shall be in possession of their civic rights and shall not have been convicted of any offence involving a penalty laid down in Section 30 (1), (2) and (3) of the Penal Code.

(2) Aliens shall be required in addition to have resided for not less than years in the territory of the Republic of Cameroon.

Section 11: (1) Registration of a trade union or employers' association shall be effected as follows:

An application to register the union or association and its rules shall be sent to the registrar of trade unions or employers' associations; the application shall be accompanied by two copies of the rules and a list of the names of the officers of the union or association and their titles as such;

the registrar shall acknowledge receipt of the application, examine it and register the trade union or association and its rules within a period of one month. After that deadline, the trade union or association shall be considered as having been registered.

the registrar shall not register any trade union or employers' association under a name identical to that under which any existing union or employers' association has been registered as might lead members of the unions or associations or third parties into error.

A decree shall determine the form of the certificate of registration.

Section 12: (1) If the application for registration does not comply with the conditions, the registrar shall inform the applicants of his observations in writing and request them to re-submit the application.

(2) Upon receipt of the re-submitted application the registrar shall either register the trade union or, if he refuses to do so, notify in writing within thirty days, the applicants of his refusal and the reasons therefore.

Section 13: (1) The registrar may cancel the registration of a trade union or employers' association if it is established:

That the certificate of the registration was obtained by fraud;

That the registered union or association has wilfully violated any provision of this law or carried out non-statutory activities;

That the registered union or association has ceased to exist.

Before such cancellation is effected, the registrar shall give the union or association concerned two months' notice specifying the reason for his decision.

Section 14: Any trade union, member of trade union or person feeling aggrieved by a decision of the registrar to refuse or to cancel registration of a trade union or employers' associations may; within thirty days of the notification of such decision, refer the matter to the competent court, the judgment of which shall be open to appeal. The registrar shall be entitled to be heard at any stage of the proceedings.

Chapter II: Rules of Trade Unions and Employers' Associations

Section 15: The rule of every trade union and employers' association shall comprise the following provisions:

The name of the union or association and its registered office;

The purpose for which the union or association is established;

The intended purpose of the funds and the percentage of contributions earmarked for social work;

The procedure for establishing, amending or rescinding the rules;

The procedure for appointing or removing the Union or Association leaders from office, as well as sanctions which may be meted to members;

The prohibition to elect as President, Secretary or Treasurer or to any other office, a person who can neither read or write English or French;

A provision for the keeping of nominal roll of members showing the trade, profession or usual occupation of each member and, if need be, the name of the employer;

Provisions for the investment of the funds or their deposit in a bank and for an annual or more frequent audit of accounts.

Provisions for the keeping of full and accurate accounts by the treasurer, the regular audit of such accounts by persons so

empowered and the distribution to members, who so request, of a statement of accounts prepared at least once a year by a qualified accountant.

The procedure for dissolving the union or association, the manner of devolving its assets it being understood that they shall not in any way whatsoever be shared to the members.

Chapter III: Sundry Provisions Respecting Trade Unions and Employers' Associations

Section 16: (1) Every registered trade union and employers association shall have an office to which all correspondence and notices may be addressed. The address of the said office shall be notified to the registrar within thirty days of its opening and any change of address shall likewise be notified to the registrar within thirty days of the change.

If any registered trade union or employers' association is in operation for three months without having such an office, it shall be liable to the penalty provided under Section 166 of this law.

Section 17: Trade unions and employers' associations shall enjoy legal status. They shall have the right to go to law and to acquire movable and immovable property, by way of gift or purchase without authorization.

Section 18: (1) Trade unions and employers' associations may:
Exercise in any court the rights reserved to civil action plaintiffs in criminal proceedings, in relation to acts causing direct or indirect prejudice to the collective interest of the trade or occupation which they represent;

Allocate a part of their resources to the building of workers' dwellings or the purchase of lands for cultivation or sports ground for the use of their members;

Establish, administer or make grants to institutions serving the trade or occupation such as provident schemes, solidarity funds,

laboratories, experimental farming stations, schemes for scientific, agricultural or social education, courses and publications in matters concerning the trade or occupation;

The movable and immovable property required for their meetings, libraries and vocational instruction courses shall be exempted from attachment;

Make grants to producers or consumer cooperative societies;

Make contracts or agreements with any other trade unions, employers' associations, companies, undertakings or persons.

(2) If they are so authorized by their rules and other condition that they make no distribution of profits (even by way of rebate) among their members, trade unions and employers' associations may also:

(a) purchase, with a view to hiring out, lending or distributing to their members, anything that is necessary for the trade or occupation, including raw materials, tools, implements, machinery, fertilizers, seeds, plants, animals and feed for cattle;

(b) Provide a free service for the sale of products derived exclusively from the personal labour or holdings of the members, and promote such sale by means of exhibitions, advertisements, publications, group orders and deliveries, but not by carrying out the selling operation in their own name and on their own responsibility.

Section 19: An act done by a person duly authorized by a union in furtherance of a trade dispute may be actionable only if it induces some other to break a contract of employment or interferes with the right of some other person to dispose of his capital or his labour as he wishes.

Section 20: The representative character of a trade union or employers' association shall, as and when necessary, be established by order of the Minister in charge of labour having regard to the following considerations;

In the case of a trade union, total number of members;

For an employers' association, the total number of workers employed.

(2) The administrative courts shall be competent to consider any objection raised by a trade union or employers' association against a decision on this matter.

Section 21: (1) An employer shall be permitted to deduct from the wages earned by a worker under his control the ordinary trade union contribution due from the worker, provided that the employer immediately pays the contribution so deducted to the trade union specified by the worker.

(2) The said deduction of contributions at source shall be permitted only:

If an agreement to that effect has been concluded between the employer concerned and the trade union to which the contributions are to be paid.

If the worker has agreed with such procedure by signing a form jointly accepted by the employer and the trade union, or if he can neither read nor write, by affixing his finger prints.

In addition:

The worker's consent may be withdrawn by him at any time; such withdrawal shall have effect in regard to the month following that in which it is made;

The said consent may be renewed by tacit agreement if it is not withdrawn, except in the case of a change in the amount of the contribution;

The expense incurred by the employer in deducting and paying over the contributions may be reimbursed by the trade union concerned in accordance with arrangements jointly agreed by the union and the employer.

Chapter IV: Federations Of Trade Unions And Employers' Associations

Section 22: (1) Trade unions and employers' associations which have been duly established shall be free to act in union for the purpose set out in Section 3 of this law.

(2) They may form federations of any kind and under any name. Such federations shall comply with the provisions of the previous chapters.

(3) The rules of a federations shall determine the manner in which the affiliated trade unions and employers' associations shall be represented at the level of all the organs.

(4) Such federations shall enjoy all the rights and have the benefit of all the protective measures granted to trade unions and employers' associations.

Title III

Contracts of Employment

Chapter I: Individual Contracts of Employment

I. –General Provisions

Section 23: (1) A contract of employment shall be an agreement by which a worker undertakes to put his services under the authority and management of an employer against remuneration.

(2) Contracts of employment shall be negotiated freely.

Section 24: (1) Irrespective of the place where the contract is made and the place of residence of either party, every contract of employment which is to be performed in Cameroon shall be governed by the provisions of this law.

(2) The above rule shall apply in the case of partial performance in Cameroon of a contract initially made under other legislation. It shall not apply, however, to a worker who is sent on secondment for a period not exceeding 6 (six) months.

(3) Subject to the provisions of section 27, the existence of the contract may be recorded in whatever manner the contracting parties

find convenient. Any form of evidence may be adduced in proof of its existence.

(4) Written contracts shall be exempt from all stamp and registration fees.

II. – Conclusion and Performance of Contracts

Section 25: (1) A contract of employment may be concluded for a specified or unspecified duration.

(a) A contract of specified duration is a contract whose termination is fixed in advance by both parties. It may not be concluded for a duration of more than (2) years renewable once.

The following shall be considered contracts of employment of a specified but non-renewable period:

A contract whose termination is subject, to the occurrence, which does not depend exclusively on the will of the parties, of a future but certain event that is precisely indicated;

A contract concluded for the execution of a specified task.

(b) A contract of an unspecified period is a contract whose termination is not fixed in advance and may be terminated at any time by the will of the worker or the employer, provided that the prior notice referred to in Section 34 below is given.

(2) The contract of foreign workers shall be renewed only after endorsement by the Minister in charge of labour.

(3) Contracts of specified duration for Cameroonian workers shall be renewed only once with the same company. At the expiry of such renewal, if working relations continue, the contract shall be transformed into one of unspecified duration.

(4) The above provisions shall not apply to workers recruited to carry out exclusively;

A temporary job replacement of an absent worker or one whose contract has been suspended, or the completion of a piece of work within a specific time-limit and requiring additional manpower;

An occasional job aimed at coping with unexpected growth in the activities of the company as a result of certain economic conditions or entailing urgent works to prevent imminent accidents, organizing

emergency measures or repairing company equipment, facilities or building which are dangerous for the workers;

A seasonal job generated by the cyclical or climatic nature of company activities.

(5) The employment conditions of the workers referred to in the preceding paragraph shall be laid down by decree issued after consultation with the National Labour Advisory Board.

Section 26: (1) The workers referred to in Section 25 (4) above may be recruited by a temporary job contractor.

(2) A temporary job contractor shall mean any individual or corporate body whose sole activity consists in temporarily providing users with workers whom they recruit and pay.

(3) The workers referred to in the preceding Subsection may be hired only for temporary jobs and solely in the cases laid down in Section 25 (4).

(4) The founding of a temporary job company shall be subject to the prior approval of the Minister in charge of labour.

(5) The contract of employment between the temporary job contractor and a worker provided to a user must be written.

(6) Each worker placed at the disposal of a user must conclude a written temporary transfer contract with the temporary job contractor. The duration of such contract shall not exceed 1 (one) year with the same user.

(7) The conditions of implementation of this section shall be laid down by decree issued after consultation with the National Labour Advisory Board.

Section 27: (1) Every contract of employment of specified duration exceeding three months, or requiring the worker to live away from his usual place of residence, shall be written. A copy of the contract shall be forwarded to the labour Inspector of the area.

(2) A contract of employment concerning a worker of foreign nationality must be endorsed by the Minister in charge of Labour previously to commencement thereof.

(3) The application for endorsement shall be made by the employer. Where such endorsement is refused, the contract shall be null and void.

(4) Where the Minister in charge of Labour fails to announce a decision within the two months immediately following reception of the application for endorsement, the contract shall be deemed to have been endorsed.

(5) The conditions of implementation of this section shall be laid down by decree issued after consultation with the National Labour Advisory Board.

Section 28: (1) There shall be probationary hiring where, prior to signing a final contract, the employer and the worker agree to appraise in particular, the worker's quality of services and his output, as concerns the employer and as concerns the workers, the working, living, wage, safety and hygiene conditions as well as climate under the employer.

(2) Any probationary hiring must be stipulated in writing. Such hiring shall not be made for a period exceeding that required for trying out newly engaged personnel, taking into account the techniques and practices of the trade or occupation; Under no circumstances shall probationary hiring exceed six months, including any renewal, save in the case of managerial staff for whom the period may be extended to eight months.

(3) The time required for recruitment, travelling, training and probation shall not be included in the maximum duration of the trial period.

(4) The cost of repatriation of displaced workers shall be defrayed by the employer regardless of the reason for termination.

(5) Where the worker's employment is maintained beyond expiry of a probationary hiring contract and where no new contract is made, the parties shall be deemed to have entered into a final contract taking effect from the beginning of the trial period.

(6) An order of the Minister in charge of Labour issued after consultation with the National Labour Advisory Board shall fix the conditions of probationary hiring.

Section 29: (1) The internal regulations shall be drawn up by the company head. They shall deal exclusively with rules relating to the technical organisation of work, disciplinary standards and procedure, safety and hygiene at work which are necessary for the proper functioning of the company.

(2) If any other regulations are included (in particular, regulations respecting remuneration) they shall be deemed to be null and void, subject to the provisions of section 68 (4) of this law.

(3) Before enforcing the internal regulations, the company head shall communicate them to the staff representatives (if any) for their opinion and for endorsement to the Labour Inspector of the area who may order the deletion of or amendment to any provisions which may be repugnant to the laws and regulations.

(4) An order of the Minister in charge of labour issued after consultation with the National Labour Advisory Board shall prescribe the procedure for communicating, registering and posting up the internal regulations as well as the number of company workers above which the existence of such regulations shall be compulsory.

Section 30: (1) Employers shall be prohibited from imposing fines.

(2) The only disciplinary penalty entailing loss of wages which an employer may inflict shall be suspension from work with loss of benefits.

(3) Suspension from work shall be null and void unless the following conditions have been met simultaneously;

(a) That it shall be for a maximum period of eight working days as from the time the penalty is inflicted;

(b) That the worker shall be notified in writing of the suspension and the reasons therefore,

© That the Labour Inspector of the area shall be informed of the suspension within forty-eight hours.

Where the reasons for the suspension are found to be insufficient by the court, the workers against whom the suspension was pronounced shall be paid a compensatory allowance corresponding to the lost wages, and where applicable, damages, if he adduces proof

that as a result of the suspension, he suffered further damages in addition to his lost wages.

Section 31: (1) The worker shall devote all his gainful activity to the undertaking, save as otherwise stipulated in the contract; provided that he may, unless otherwise agreed, undertake outside his working hours any gainful activity which is not liable to compete with the undertaking or prejudicial to the due performance of the agreed services.

(2) However, it may be stipulated by agreement between the parties that in the event of a breach of contract, the worker shall not engage, on his own account or on the account of another person, in any activity liable to compete with the employer in either of the following cases:

(a) If the contract is broken by the worker and the employer has defrayed the travel expenses from the worker's place of residence to the place of work;

(b) If the contract is broken in consequence of serious offence committed by the worker.

(3) Any such prohibition shall not apply outside a radius of 50 kilometres from the workplace and its duration shall not exceed one year.

III- Suspension and Termination of the contract

Section 32: A contract of employment shall be suspended;

(a) If the establishment is closed by reason of the departure of the employer to undertake military service for any reason;

(b) During the worker's military service or any period of recall for military service for any reason

(c) during the worker's absence in the case of illness duly certified by a medical practitioner approved by the employer or one belonging to a hospital establishment recognized by the State, for a period not exceeding six months; this period shall be extended until such time as the worker is replaced;

(d) During the period of the maternity leave provided for by Section 84;

(e) During the period of disciplinary suspension of the worker, decided in accordance with Section 30;

(f) During any period of leave for worker's education as defined in Section 91;

(g) During the period of unavailability following an industrial accident or occupational disease;

(h) By mutual consent, during the exercise of political or administrative duties following an election or appointment;

(i) During the period when the worker is under police custody or in preventive detention;

(j) During the absence of a worker who has to follow his/her spouse who has changed his/her usual place of residence if such worker cannot be transferred. The duration shall be limited to two years, which may be renewed by mutual agreement between the two parties.

(k) During a period of lay-off not exceeding six months. Lay-off shall mean the collective interruption of all or part of the work by the personnel of an undertaking due to accidents or force majeure or an unfavourable economic situation.

Section 33: (1) In each of the cases (a), (b) and (c) referred in Section 32 above, the employer shall be bound to pay to the worker, if the contract is of unspecified duration, compensation equal either to the compensation in lieu of notice when the period of absence is equal to or exceeds the period of notice, or to the remuneration to which the worker would have been entitled during his absence when the period of absence is shorter than the notice period provided for Section 34.

(2) In the same cases, if the contract is of specified duration, the compensation shall be granted within the above limits, by reference to the notice provided for contract of unspecified duration, the length of service being deemed to run from the start of the contract in force. In such case, suspension may not have the effect of extending the term of the contract initially provided for.

(3) In case of lay-off and in the absence of a collective agreement, the conditions for compensation shall be laid down by order of the Minister in charge of labour, issued after consultation with National Labour advisory Board.

Section 34: (1) A contract of employment of unspecified duration may be terminated at any time at the will of either party. Such termination shall be subject to the condition that previous notice is given by the party taking the initiative of terminating the contract. Notification of termination shall be made in writing to the other party and shall set out the reason for the termination.

(2) The notice period shall start to run from the date of such notification. It shall be subject to any condition precedent or condition subsequent. Under no circumstance may it be set off against the leave period of the worker.

(3) An order of the Minister in charge of Labour issued after consultation with the National Labour Advisory Board shall prescribe the conditions for such notice and its duration, giving regard to the worker's seniority in the enterprise and the occupational group to which he belongs.

Section 35: (1) During the period of notice, the employer and the worker shall be bound to respect all the obligations which each has assumed towards the other.

(2) For the purpose of seeking other employment, the worker shall, during the period of notice, be allowed during each week one day off (with full wages) which may be taken all at once or one hour at a time as he may desire.

(3) Where the above obligations are not respected by one of the parties, no period of notice shall be enforceable on the other party. This provision shall be without prejudice to the right of the injured party to claim damages.

Section 36: (1) Whenever a contract of employment of unspecified duration is terminated without notice or without the full period of notice being observed, the responsible party shall pay to the other party compensation corresponding to the remuneration

including any bonuses and allowances which the worker would have received for the period of notice not observed.

(2) Provided that a contract may be terminated without notice in cases of serious misconduct, subject to the findings of the competent court of law as regards the gravity of the misconduct.

Section 37: (1) Save in the case of serious misconduct, where a contract of employment of unspecified duration is terminated by the employer, the worker with no less than two successive years of seniority in the enterprise shall be entitled to severance pay distinct from pay in-lieu-of notice which shall be determined giving regard to the worker's seniority.

(2) An order of the Minister in charge of labour, issued after a recommendation by the National Advisory Board, shall prescribe the conditions for granting and calculating the severance pay.

Section 38: A contract of employment of specified duration may not be terminated prior to its expiry save in the case of gross misconduct, force majeure or by the written consent of both parties.

Section 39: (1) Every wrongful termination of a contract may entail damages. In particular, dismissals effected because of the opinions of the worker, or his membership or non-membership of a particular trade union shall be considered to be wrongful.

(2) The competent court may ascertain the wrongful nature of the termination by investigating the causes and circumstances thereof. The judgement must expressly mention the reason put forward by the party terminating the contract.

(3) In all cases of dismissal, it shall be up to the employer to show that the grounds for dismissal alleged by him are well-founded.

(4) Damages shall be assessed with due regard to all factors indicating that prejudice has been caused and all factors determining the extent of such prejudice, and in particular, with due regard:

(a) Where the worker is responsible, to his qualification and post;

(b) Where the employer is responsible, to the type of employment, the worker's seniority with the employer, his age and any vested rights.

However, the damages shall not be less than three months' salary or more than one months' salary per year of service in the enterprise.

(5) If the worker is rightfully dismissed by the employer without respecting the formalities provided for, the amount of severance pay shall not exceed one months' salary.

(6) If the salary to be taken into consideration in the above paragraphs shall be the gross average monthly salary of the worker's last twelve months of activity.

(7) These damages shall be distinct from pay in-lieu -of notice and severance pay.

Section 40: (1) The provisions of Section 34 (1) above shall be applicable in the case of dismissal on economic grounds.

(2) Dismissal on economic grounds shall mean any dismissal, effected by the employer for one or more reasons not inherent in the person of the worker and resulting from an abolition or transformation of posts or an amendment to the contract of employment consequent on economic difficulties, technological changes or internal reorganisation.

(3) To avoid dismissal on economic grounds, the employer who envisages such dismissal shall convene the staff representatives, where available, to seek with them and in the presence of the Labour Inspector of the area, other possibilities such as: reduction of working hours, shift work, part-time work, lay-off, review of various allowances and benefits and even wage cuts.

(4) At the end of negotiations which shall not last more than 30 clear days, and if an agreement is reached, a statement shall be signed by both parties and the labour Inspector explaining the measures adopted and their periods of validity.

(5) Where a worker states in writing that he does not accept the measures referred to in the above paragraph, he shall be dismissed with pay in-lieu-of notice and severance pay, where meets the conditions for enjoyment thereof.

(6) (a) Where the parties fail to reach an agreement after the negotiations provided for above, or where notwithstanding the measures envisaged certain dismissals are still necessary, the employer must determine an order of dismissals taking into consideration professional proficiency, seniority in the undertaking and the family responsibilities of workers. In any case, the order of dismissals must give precedence to professional proficiency.

(b) To obtain the opinions and suggestions of the staff representatives, the employer shall send them the list of workers he intends to dismiss, explaining the criteria used.

(c) The staff representatives shall be bound to forward their written reply to the employer within no more than eight clear days.

(d) The employer's notification and the reply from the staff representatives shall immediately be sent to the Labour Inspector of the area for his arbitration.

(7) Staff representatives may be dismissed only if their posts have been abolished and with the consent of the Labour Inspector of the area.

(8) In case of a dispute regarding the type of order of dismissals, the onus of proof shall rest with the employer.

(9) A dismissed worker shall have prior claim with equal professional proficiency, the employment in the same establishment for a period of two years.

(10) An order of the Minister in charge of labour issued after consultation with the National Labour Advisory Board shall determine the terms and conditions of enforcement of the present section.

Section 41: In the event of termination of a contract subject to the provisions of section 27(2) the employer shall be required to so notify the authority, which endorsed the contract within 15 days.

Section 42: (1) (a) In the event of any change in the legal status of the employer, in particular through succession, sale, amalgamation, financial reorganisation, or transformation into a partnership or company, all contracts of employment in force on the date of the

change shall subsist between the new organisation and the personnel of the undertaking. They shall be terminable only in the manner and subject to the conditions laid down in this Part.

(b) The provisions of the above paragraph shall not be applicable:
Where the enterprise is changing its activities;

Where the workers express before the Labour Inspector of the area, their desire to be laid off with payment of their benefits, prior to such change

(c) The closure of the undertaking other than in cases of <<force majeure>> shall not absolve the employer from his obligation to observe the rules laid down in this part. Neither bankruptcy nor liquidation by court order shall be deemed to be a case of << force majeure>>

(2) The contract of employment, may while still in force, be amended on the initiative of either party.

(a) Where the amendment suggested by the employer is substantial and is rejected by the worker, the termination of the contract that may result there from shall be the responsibility of the employer. Such termination shall be wrongful only where it is not justified by the interest of the undertaking.

(b) Where the amendment suggested by the worker is substantial and is rejected by the employer, the contract may be terminated only following the resignation of the worker.

Section 43: Unless otherwise agreed, the provisions of sections 34 to 42 shall not apply to probationary hiring contracts, which shall be terminable without notice, and without either party having a claim to compensation.

Section 44: (1) On the expiry of the contract of employment, regardless of the reason for its termination, the employer shall serve to the worker at the time of his departure a certificate stating only the dates of his arrival and departure and the types and dates of various posts he has held.

(2) The said certificate shall be exempt from stamp duties and registration fees, even if it contains the phrase (<< free of engagements>> or other phrase not constituting a bond or a receipt.

Chapter II: Apprenticeship

Section 45: A contract of apprenticeship is a contract whereby the head of an industrial, commercial or agricultural establishment or a craftsman undertakes to give or cause to be given to another person complete and systematic training and whereby the later undertakes in return to obey the instructions which he receives and to perform the tasks assigned to him for the purpose of his apprenticeship.

Section 46: Any such contract, which is not made in writing, shall be null and void. Such contract shall be exempt from all stamp duties and registration fees.

Section 47: The conditions as to form and substance, the effect of the contract, the circumstances and consequences of termination and the measures for ensuring performance shall be specified by a decree issued after consultation with the National Labour Advisory Board.

Chapter III: Subcontractors

Section 48: A subcontractor shall be a person who enters into a written contract with a contractor to carry out a specified piece of work or supply specified services for an agreed price. The subcontractor shall himself recruit the necessary workers.

Section 49: (1) Where the work is carried out in the workshops or other business premises of the contractor, he shall, where the subcontractor becomes insolvent, assume the subcontractor's obligations towards the workers.

(2) Where the work is carried out at a place other than the workshops or other business premises of the contractor, he shall, if

the subcontractor becomes insolvent, be responsible for payment of the workers' wages.

(3) An aggrieved worker shall, in the above cases have the right to institute direct action against the contractor.

(4) However, the provisions of Sub-sections (1), (2) and (3) above shall not apply where the subcontractor is registered in the trade register and holds a valid business licence.

Section 50: (1) The subcontractor shall, in a notice permanently displayed in all the workshops or other business premises where work is being carried out, indicate that he is a subcontractor and give his full name and address, the name and address of the contractor who entrusted him with the work and the working hours.

(2) The display of such notice shall be compulsory even if the work is carried out in the workshops or other business premises of the contractor.

Section 51: A contractor shall keep an up-to-date list of the subcontractors with whom he has signed contracts.

Chapter IV: Collective Agreements And Company Agreements

Section 52: (1) A collective agreement is an agreement intended to regulate labour relations between employers and workers of either an enterprise or group of enterprises or of one or more branches of activity. This agreement shall be concluded between:

The representatives of one or more trade unions or a federation of trade unions on the one hand; and

The representatives of one or more employers' associations or any group of employers or one or more employers acting individually on the other hand

(2) A collective agreement may contain provisions more favourable to workers than those of the law and regulations in force. It shall not impair provisions relating to matters of public policy.

(3) Each collective agreement shall define its scope of application, which may be notional, interdivisional or local.

(4) The text of every collective agreement shall be published free of charge in the official Gazette by the Minister in charge of employment as soon as he has been notified that it has been deposited at the registry of the competent court.

(5) Before such publication, the Minister in charge of employment may invite the contracting parties to amend or delete any provisions of the said text which may be repugnant to existing laws and regulations.

Section 53: (1) At the request of one of the most representative trade unions or employers' associations or on the initiative of the Minister in charge of employment, the provisions of a collective agreement which complies with conditions laid down by regulations may, by a decree issued after the National Labour Advisory Board has given its reasoned opinion, be rendered compulsory for all employers and workers within the industrial and territorial coverage of the said agreement.

(2) Such extension of the rights and obligations provided under a collective agreement shall apply for the period and on the conditions laid down in the said agreement.

(3) However, the extension decree may, after the National Labour Advisory Board has given its reasoned opinion and without altering the general effect of the agreement, exclude from such extension any clauses which are not in keeping with the conditions of the particular branch of activity in the scope of the agreement concerned.

Section 54: (1) The extension decree shall cease to have effect when the collection agreement to which it refers is no longer enforceable between parties as a result of its termination.

(2) At the request of one of the signatory parties or on the initiative of the Minister in charge of employment, such decrees may, after the National Labour Advisory Board has given its reason opinion, be revoked so as to any of its provisions whenever it appears that the agreement or the provision in question is no longer

in keeping with the conditions of the branch of activity in the territorial coverage concerned.

Section 55: In case of the absence or inadequate organisation of trade-unions or employers; associations resulting in the continuing impossibility to conclude a collective agreement in a given branch of activity or for a given occupation, a decree issued after consultation with the National Labour Advisory Board may either regulate working conditions and determine the classification of occupations and the minimum wage for that branch or occupation or render wholly or partly applicable to it, the provisions of a collective agreement in force in a branch activity within the same economic sector.

Section 56: (1) Every decree to provide for or revoke the extension of a collective agreement shall be preceded by consultation with trade-unions and employers' associations and with the persons concerned who shall present their observations within 30 (thirty) days.

(2) The terms and conditions of such consultation shall be laid down by a decree issued after the opinion of the National Labour Advisory Board.

Section 57: (1) Agreements concerning one or more specified establishments may be made between an employer or group of employers on the one hand, and representative of the personnel of the establishment (s) concerned on the other hand.

(2) The object of company agreements shall be to adapt the provisions of collective agreements to the particular conditions of the establishment (s) under consideration, especially the conditions of award and methods of calculation of the incentive wage, individual or group production bonuses and productivity bonuses.

(3) Company agreements may include new provisions and clauses which are more favourable to the workers.

(4) In the absence of a collective agreement, a company agreement may deal only with wages and subsidiary allowances.

Section 58: Where the workers in any public or semi-public enterprise or regulations, collective agreements may be concluded in their regard in accordance with the provisions of this chapter.

Section 59: Whenever a collective agreement is extended by decree, the said agreement shall apply to the public and semi-public enterprises or establishment referred to in Section 58 above which, by reason of their nature and activity, fall within the scope of the agreement

Section 60: Rules as to form and substances regarding the conclusion and performance of the collective agreements and company agreements shall be laid down by decree issued after consultation with the National Labour Advisory Board.

Title IV

Wages

Chapter I: Determination of Wages

Section 61: (1) In this law, “wages” means remuneration or earnings, however designated or calculated, capable of being evaluated in terms of money and fixed by mutual agreement or by the provisions of regulations or collective agreements which are payable by virtue of a contract of employment by an employer to a worker for the work done or to be done or for services rendered or to be rendered.

(2) For the same type of work and level of proficiency, workers shall be entitled to the same remuneration, irrespective of their origin, sex, age, status and religion, subject to the provisions of this section.

(3) Apart from the cases provided for by the regulations or collective agreement in force and except where there is agreement between the parties concerned, no wage shall be paid to a worker in case of absence.

Section 62: (1) A decree issued after consultation with the National Labour Advisory Board shall determine the guaranteed minimum industrial and commercial wage.

(2) Occupational categories and wages applicable to such categories shall be determined through negotiation within the framework of the collective agreements or company agreements provided for in Part III of this law.

Section 63: The rates of remuneration for piece-work shall be so calculated that it provides a worker of average capacity, working normally, with a wage at least equal to that of a worker engaged in similar work and paid by unit of time.

Section 64: (1) The minimum wage rates and the conditions of remuneration for piecework shall be posted up in the places where workers are paid.

Section 65: (1) When the remuneration of worker's services consists in whole or in part of commissions or sundry bonuses and allowances or compensation in lieu of such allowances, such remuneration, in so far as it does not constitute a refund of expenses, shall be taken into account in calculating remuneration during paid holidays, pay in-lieu-of notice and damages.

(2) The amount to be taken into consideration for this purpose shall be the monthly average of the items referred to in sub-section I above.

(3) The period in respect of which the calculation is made shall not exceed the twelve months of service preceding the cessation of work.

Section 66: (1) An employer shall be bound to provide housing for any worker he has transferred in order to perform a contract of employment necessitating the installation of such worker outside his normal place of resident such accommodation shall be adequate and correspond to the family status of the worker, and shall satisfy the conditions to be determined by order of the Minister in charge of

Labour issued after consultation with the National Labour Advisory Board

(2) If no housing is provided, the employer shall be bound to pay the worker concerned a housing allowance. The minimum rate and methods of payment shall be fixed by the above-mentioned order.

(3) The employer shall be bound to ensure a regular supply of foodstuffs for any worker and his family to whom he provided accommodation where such a worker cannot procure such foodstuffs himself. Such supply of foodstuffs shall be subject to payment at a value to be determined by the order referred to above.

(4) The facilities provided for in this section shall not be claimable when wages are not due, except as may be provided in the regulations in force, or stipulated by mutual agreement between the parties concerned.

Chapter II: Payment Of Wages

I -Mode of payment

Section 67: Apart from the facilities provided for in section 66 above, wages shall be payable legal tender and any other method of payment shall be unlawful. Any stipulation to the contrary shall be null and void.

Section 68: (1) Save in the case of trades and occupations where the established custom is to provide for a different frequency of payment, which trades and occupations shall be specified by an order of the Minister in charge of Labour issued after consultation with the National Labour Advisory Board, wages shall be paid at regular intervals not exceeding one month. However, workers may, at their request, receive at the end of fifteen days a payment on account equal to half the monthly amount of their basic remuneration and in such case the balance due to them shall be settled at the time of the following payment.

(2) Monthly payments shall be made not later than eight days following the end of month of employment in respect of which the wages are due.

(3) Upon the termination of a contract of employment, a final settlement of all wages and allowances shall be effected as soon as the employment ceases. However, in disputed cases the employer may obtain authorisation from the President of the competent court to retain provisionally all or part of any attachable portion of the amount payable.

(4) Workers absent on payday shall be entitled to draw their wages during the normal hours of opening of the pay office in accordance with the internal regulations of the enterprise.

(5) Wages shall be paid on working days only at or near the work place. Wages may not be paid in a public house or in a shop or store except in the case of workers who are normally employed there.

Section 69: (1) Payment of wages shall be evidenced by a document made out or certified by the employer or his representative and initialled by each worker or by two witnesses if the worker can neither read nor write English or French. These documents shall be preserved by the employer in the same manner as accounting documents and shall be made available, upon demand, to the Inspectorate of Labour.

(2) The employer shall, at the time of payment, give the worker an individual pay voucher in the form prescribed by order of the Minister in charge of Labour issued after consultation with the National Labour Advisory Board.

(3) The fact that a worker has signed an entry of the words “in full settlement” or any similar expression either during the performance of his contract of employment or after its termination whereby he purports to waive all or part of his rights under the contract of employment shall not be admitted as evidence of satisfaction.

(4) Acceptance of the pay voucher by the worker without protest or reservation shall not be considered as a remuneration by him of payment of all or part of any wages, allowances or supplementary

payments which are due him by virtue of laws, regulations, agreements or contractual provisions. Such acceptance shall not suspend the barring of an action of recovery as laid down in Section 74, nor shall it prevent review of the worker's wage account.

II -Privileges and guarantees of usage claims.

Section 70: (1) Up to the limit of the percentage of wages not liable to attachment as provided for by the laws and regulations in force wage claims shall be preferred claims having priority over all other general or special preferential claims.

(2) The priority of claims shall extend to compensation due for breach of contract and to damage referred to in Section 39.

Section 71: Special laws affording direct action or special preferential claims to certain categories of workers shall apply to wage claims.

Section 72: In the event of liquidation or bankruptcy, the sums with-held by the Treasury, after cessation of payments, from payment warrants due to the employer shall be paid into the assets.

Section 73: (1) In the same event, a worker housed in accommodation provided by the employer before commencement of liquidation or bankruptcy proceedings shall be entitled to it under Section 66.

(2) Such a worker shall be granted legal aid, without other conditions as regards any application for an attachment order, which he may think fit to make to the competent court.

III-Limitation of Action for Recovery of Wages

Section 74: (1) Action for the recovery of wages shall be barred by limitation after three years. As regards limitation, any compensation due for breach of contract of employment shall be deemed to be wages.

(2) Limitation shall start to run from the date on which wages fall due. It shall cease to run either in case of written claim by the worker to the Inspector of Labour concerning payment of the wages or in case of making up of account, private acknowledgement of debt, authentic deed of acknowledgement of debt or un expired summons.

Chapter III: Deductions from Wages

Section 75: (1) Apart from compulsory levies, reimbursement of the value of any facilities provided in conformity with the provisions of Section 66

(2) and any deposits which may be stipulated in collective agreements or individual contracts, no deductions from wages shall be permissible save in the following circumstances:

Where there is a court order of attachment;

In application of the provisions of Section 21 of this law;

(c) By voluntary assignment to which the worker has subscribed in person and notified for verification to the Inspector of Labour of his place of residence in the case of repayment of cash advances made by the employer to the worker, and before the president of the competent court in other cases;

(d) Where a friendly society providing for payment of contributions by the workers has been instituted within the framework of the laws and regulations in force.

(2) Payment on account in relation to work in progress shall not be considered as advances.

(3) Any stipulation in a collective agreement or individual contract authorization other levies shall be null and void.

(4) Any sum withheld from a worker in violation of the above provisions shall bear interest payable to him at the statutory rate from the date at which it should have been paid and may be claimed by him until the right is barred by limitation; effluxion of the limitation period shall be suspended during currency of the contract of employment.

Section 76: A decree issued after consultation with the National Labour Advisory Board shall determine the portions of wages, which may be liable to progressive levies and the rates of such levies. Deductions made under the preceding section shall determine the portions of wages which may be liable to progressive levies and the rates of such levies. Deductions made under the preceding section shall not exceed, at each wage payment, the percentage established by this decree.

(2) In the calculation of deductions, regard shall be had not only to the wages proper but also to all payments supplementary there to, excepting the allowances specified as unattachable by the rules and regulations in force, sums payable by way of reimbursement of expenses incurred by the worker and any benefits due under the social insurance legislation or regulations issued there under.

Section 77: It shall be unlawful for employers to restrict in any way a worker's freedom to dispose of his wages as he thinks fit.

Chapter IV: Company Stores

Section 78: (1) The term "company store" means any arrangement where an employer directly or indirectly sells or supplies goods to workers in his employment for their normal personal requirements.

(2) A company store shall be permitted to operate provided that the following four conditions are met:

The workers are free to obtain their supplies there or not.

The goods are sold for immediate cash payment and without profit.

The accounts of the company store or stores are kept entirely separate and are subject to inspection by a supervisory committee elected by the workers; and

Neither alcohol nor spirituous liquors are offered for sale.

Section 79: (1) The opening of a company store as provided for in Section 78 shall be subject to a declaration lodged with the local Inspector of Labour.

(2) The operation of any company store shall be subject to inspection by the Inspector of Labour who may, on discovery of any abuse, order the closing of the store for a period not exceeding one month.

In the event of a second offence, the store shall be permanently closed by order of the Minister in charge of Labour on the proposal of the local Inspector of Labour.

Title V

Conditions of Employment

Chapter I: Hours of Work

Section 80: (1) Statutory hours of work in all public and private non-agricultural establishments may not exceed forty hours per week.

(2) In all agricultural and allied undertakings, the hours of work shall be based on a total of two thousand four hundred hours per year, within the maximum limits of forty-eight hour per week.

(3) The above provisions shall apply to all workers, irrespective of age and sex and irrespective of the mode of payment.

(4) Decrees issued after consultation with the National Labour Advisory Board shall determine the circumstances under which exemptions from compliance with the statutory hours of work are authorized, as well as the conditions governing the performance and remuneration of overtime giving rise to extra pay.

Chapter II: Night Work

Section 81: Any work done between ten p.m. and six a.m. shall be considered as night work.

.Section 82: (1) The rest period for woman and children shall not be less than 12 (twelve) consecutive hours.

(2) Night work in industries shall be prohibited for women and children.

(3) This prohibition shall not apply to:

Women with executive duties;

Women working in services not involving manual labour

(4) The procedure for implementing this section shall be determined by order of the Minister in charge of Labour, issued after consultation with National Labour Advisory Board.

Chapter III: Employment of Women, Young Persons and Children

Section 83: An order by the Minister in charge of Labour, issued after consultation with the National Commission on Industrial Hygiene and Safety provided for under Section 120, shall specify the types of tasks which women and pregnant women respectively shall not perform.

Section 84: (1) Any pregnant women whose pregnancy has been medically certified may terminate her contract of employment without notice and without being obliged on that account to pay the compensation provided for in Section 36 above. During such period, the employer shall not terminate the employment contract of the woman concerned because of the pregnancy.

(2) Every pregnant women shall be entitled to 14 (fourteen) weeks of maternity leave which may start 4 (four) weeks before the due date of confinement. Such leave may be extended by 6 (six) weeks in case of a duly certified illness resulting either from the pregnancy or confinement. During such leave, the employer shall not terminate the employment contract of the woman in question.

(3) Where the confinement occurs before due date, the rest period shall be extended so that the worker receives the full 14 (fourteen) weeks of leave to which she is entitled.

(4) Where the confinement occurs after due date, leave taken before may be extended to the date of confinement without such extension leading to the reduction of the post natal leave.

(5) Apart from the various benefits provided for by legislation in matters of social and family welfare, the woman shall be entitled, during the maternity leave, to a daily allowance, payable by the National Social Insurance Fund and equal to the amount of the wages actually received at the time of suspension of the employment contract; she shall retain the right to benefits in kind.

Section 85: (1) For a period of 15 (fifteen) months following the birth of the child, the mother shall be entitled to nursing breaks.

(2) The total duration of the breaks shall not exceed 1 (one) hour per working day.

(3) During the said period, the mother may terminate her contract of employment without notice under the conditions laid down under Section 85 (1) above.

Section 86: (1) No child shall be employed in an enterprise even as an apprentice before the age of 14 (fourteen) years, except as otherwise authorized by order of the Minister in charge of

Labour, taking account of local conditions and the jobs which the children may be asked to do

(2) An order of the Minister in charge of Labour shall determine the conditions for the hiring, employment and supervision of the employment of young persons on board ship, provided:

(a) that a young person under 18 (eighteen) years of age may in no case be employed on board ship as a trimmer or stoker, and

(b) that children and young persons under 18 (eighteen) years of age are to be embarked on ships other than those on which only members of the same family are employed, they shall be medically examined to ascertain of their fitness for work on board ship and

medical certificate shall be made out attesting fitness for such work and signed by an approved medical practitioner.

(3) An order of the Minister in charge of Labour shall specify the types of work and categories of enterprises in which young people shall not be employed, and the age-limit to which the prohibition shall apply.

(4) The orders referred to in the above sub-sections shall be issued after consultation with the National Commission on Industrial Hygiene and Safety.

Section 87 (1) The Inspector of Labour of the area may order women and children to be examined by an approved medical practitioner in order to ascertain that the work allotted to them is not beyond their strength. Such order shall be automatic if requested by the woman or child.

(2) A woman or child shall not be kept on any job which has been so found to be beyond their strength and shall be transferred to more suitable work. If this is impossible, the contract shall be terminated without notice and without either party being responsible.

Chapter IV: Weekly Rest

Section 88: Weekly rest shall be compulsory. It shall consist of at least 24 (twenty four) consecutive hours each week. Such rest shall fall as a rule on Sunday and may under no circumstances be replaced by a compensatory allowance.

(2) An order by the Minister in charge of Labour, issued after consultation with the National Labour Advisory Board, shall prescribe the procedure for applying the preceding sub-section.

Chapter V: Leave and Transport

I – Leave

Section 89: (1) In the absence of more favourable provisions in the collective agreement or individual employment contract, paid leave at the employer's expense shall accrue to the worker at the rate of one and half working days for each month of actual service.

(2) Any period equivalent to 4 (four) weeks or 24 (twenty four) days of work shall be deemed to be 1 (one) month of effective service.

(3) For the calculation of leave, periods of effective service shall be:

(a) Periods of unavailability due to industrial accident or occupational disease;

(b) Absence, not exceeding 6 (six) months stemming from illness duly certified as provided for under section 32 above;

(c) Maternity leave as provided for under Section above.

(d) Lay-offs as provided for under Section 32 above.

(4) A maximum of 10 (ten) days per year of paid special leave of absence, not deductible from annual leave, shall be granted to workers on the occasion of family events directly concerning their own home. A decree issued after consultation with the National Labour Advisory Board shall determine the procedure for implementing this sub-section.

Section 90: (1) For young persons under 18 (eighteen) years of age, leave shall accrue at the rate of two and half days instead of one and a half days per month of service.

(2) For mothers, the leave shall be increased by either 2 (two) working days for each child under 6 (six) years of age on the date of the departure on leave who is officially registered and lives in the home, or 1 (one) day only if the mother's accrued leave does not exceed 6 (six) days.

(3) The leave shall be increased depending on the worker length of services in the enterprise by 2 (two) working days for each full period whether continuous or not of 5 (five) years of service. For mothers, this increase shall be additional to be one provided for under the sub-section above.

(4) Leave which exceeds 12 (twelve) working days may be split up by mutual consent of the parties. In this case, one of the portions of leave must be at least 12 (twelve) continuous working days.

Section 91(1) Unpaid leave, whose duration shall not be deducted from the annual paid leave, may be granted, at his request, to a worker or apprentice who wishes to attend a course exclusively devoted to workers' education or trade union training and organized either by a centre attached to a worker's trade union organization recognized either as representative at the national level or by an organisation institution or agency specially approved to this effect by the Minister in charge of Labour.

(2) The duration of the said leave which may be split up shall be agreed upon by both parties. The leave, which shall not exceed 18 (eighteen) working days, shall be deemed to be a period of actual service for the calculation of the worker's paid leave, family allowances and length of service in the enterprise.

Section 92: (1) Leave shall have accrued after a period of actual service of 1 (one) year.

(2) Provided that collective agreements or individual contracts providing for leave longer than that determined by Section 89 may stipulate that the leave shall have accrued after a longer period of actual service, but such period may not exceed 2 (two) years.

(3) Entitlement to leave shall be barred by limitation 3 (three) years after the day on which employment are terminated.

(4) If the contract is terminated or expires before the worker has exercised his right to leave, he shall receive compensation in lieu thereof, based on the entitlement which has accrued under Section 89 and 90 above.

(5) Since leave is granted to the worker so that he may be able to rest, payment of compensation in lieu of leave shall be prohibited in all other cases.

Section 93: The employer shall pay the worker, not later than the last day preceding the date of departure on leave, an allowance which

shall be determined in a manner laid down by decree, issued after consultation with the National Labour Advisory Board.

II – Transport

Section 94: (1) Where, because of the employer, performance of the employment contract requires or has required a worker to move from his usual residence, the employer shall be responsible for the travelling expenses of the worker, his spouse and minor children normally residing with him, as well as for the transport of their luggage.

(2) Travel and transport expenses are allowances in kind and shall therefore be provided only in case of actual travel by the worker and his family.

(3) The conditions for implementing the above provisions shall be determined by decree issued after consultation with the National Labour Advisory Board.

(4) A worker who has terminated his service and is waiting for the means of transport selected by the employer in order to return to his usual place of residence shall retain the right to benefits in kind and shall receive from the employer an allowance equal to the remuneration which he would have received, had he continued to work.

(5) Entitlement to travel and transport expenses shall be barred by limitation 3 (three) years after the day on which employment is terminated.

Title VI

Safety and Hygiene at the Work Place

Chapter I: Hygiene and Safety

Section 95: (1) Hygiene and safety conditions at the workplace shall be determined by order of the Minister in charge of Labour, issued after consultation with the National Commission on Industrial Hygiene and Safety.

(2) The said orders, while taking local conditions and contingencies into account shall aim at securing for the worker standards of hygiene and safety conforming with those recommended by the International Labour Organisation and other internationally recognized technical bodies.

(3) They shall specify the cases and circumstances in which Labour Inspectors or the Medical Labour Inspector shall have recourse to the procedure of serving formal notice on the employer. However, where there is an impending threat to the health and safety of workers, the Labour Inspector or the Medical labour Inspector or the Medical Labour Inspector shall order immediately enforceable measures to be taken?

Section 96: (1) Where working conditions endangering the safety or health of the workers but not covered by orders referred to in Section 95 are found to exist, the Labour Inspector of the occupational Health Doctor shall request the employer to remedy the situation. If the employer objects, the dispute shall be referred to the National Commission of Industrial Hygiene and Safety which shall give a ruling.

(2) In all cases, the Labour Inspector or the occupational health Doctor shall report to the said Commission on working conditions which are deemed to be dangerous, in order that appropriate regulations may, if necessary, be prepared.

Section 97: (1) It shall be forbidden to bring alcoholic beverages to the workplace and to consume them within the establishment during working hours.

(2) Consumption of such beverages within the establishment may be authorized only during normal break periods and exclusively within the canteens and refectories placed at the disposal of workers by the employer.

(3) The employer shall supply water and non-alcoholic beverages at the workplace and during working hours. Such beverages shall be controlled occasionally by the Labour Inspector or the occupational Health Doctor.

(4) The procedure for implementing the above measures shall be determined, where necessary, by orders of the Minister in charge of Labour, issued after consultation with the National Commission for Industrial Hygiene and Safety.

Chapter II: Health Services

Section 98: (1) Every enterprise and establishment of any kind, public or private, lay or religious, civilian or military, including those where persons are employed in connection with work in the professions and those belonging to trade unions or professional associations, shall provide medical and health services for their employees.

(2) The function of such services shall be to supervise conditions in respect of hygiene in the establishment, the risks of contagion and state of health of the workers, and their spouses and children if housed by the employer as well as to take appropriate preventive measures and provide the necessary medical care in accordance with the provisions of this chapter.

(3) The conditions under which workers and their families may benefit from health coverage shall be laid down by order of the Minister in charge of Labour, issued after consultation with the National Commission for Industrial Hygiene and Safety.

Section 99: (1) The medical and health service shall be under the responsibility of medical doctors who shall be recruited preferably from among practitioners holding diplomas in industrial medicine and who shall be assisted by qualified paramedical personnel.

(2) All persons so employed shall have been previously approved by a decision of the Minister in charge of Labour issued after consultation with the Minister of Public Health, in the case of paramedical personnel, consultation with the medical associations in case of doctors. Approval requirements shall be fixed by joint order of the Minister in charge of Labour and Minister in charge of Public Health.

(3) According to the size and nature of the establishment, its location and the medical infrastructure available, the medical and health service shall be organized:

Either in the form of a separate service within the establishment concerned, or in the form of a joint service for several establishments

(4) The procedure for the setting up, organization and functioning of medical and health services as well as the number and the qualification of the medical and paramedical personnel to be employed in each establishment, having regard to local conditions and to the number of workers and workers' dependents, shall be determined by order of the Minister in charge of Labour issued after consultation with the National Commission for Industrial Hygiene and Safety.

Section 100: (1) Without prejudice to the special measures taken purposes of hygiene and for the prevention of certain occupational diseases or the protection of certain categories of workers, all workers shall undergo a medical examination prior to engagement.

(2) Workers shall also be subject to medical supervision throughout their career.

(3) Orders by the Minister in charge of Labour issued after consultation with the National Commission for Industrial health and Safety shall determine the procedure regarding the medical examinations to be performed before and after engagement.

Section 101: (1) Where a worker or workers' spouses or children housed by the employer under the conditions stipulated in Article 66 above falls ill, the employer shall provide medical care and necessary medicament and accessories, within pecuniary limits determined by order of the Minister in charge of Labour issued after consultation with the National Commission for Industrial Hygiene and Safety.

(2) The employer shall also be required to provide board for every sick worker detained in the infirmary at his establishment.

Section 102: (1) The employer shall arrange for the removal to the nearest medical unit of any sick or injured person fit to be moved who cannot be treated with the facilities at the employer's disposal.

(2) If the employer has no suitable transport immediately available for the above purpose, he shall without loss of time notify the head of the nearest administrative unit, who shall cause the patient to be removed by transport at his disposal.

(3) Where the sick or injured persons are not fit to be moved, the administrative authority notified by the employer shall arrange for medical care to be provided on the spot.

(4) All cost incurred by the Administration in this connection shall be repaid by the employer at the official rates.

Section 103: An order of the Minister in charge of Labour, issued after consultation with the National Commission for Industrial Hygiene and Safety, shall determine the circumstances in which employers are required to set up medical services, and to provide these with medicament and accessories.

Title VII

Administrative Bodies and Measures of Implementation

Chapter I: Labour and Social Insurance Administration

Section 104: (1) The Labour and Social Insurance Administration comprises all services responsible for matter relating to the condition of workers, labour relations, employment, manpower movements, vocational guidance and training, placement, the protection of workers health as well as social insurance problems.

(2) A decree shall determine the organization and functioning of such services.

I – Duties and prerogatives of Labour and Social Insurance inspectors

Section 105: (1) By <<Labour and Social Insurance Inspector>>, we mean any civil servant of the Labour administration corps placed at the head of a Labour and Social insurance Inspectorate or his delegate.

(2) Labour Inspectors shall be civil servants enjoying job security by virtue of their status and conditions of service.

(3) In order that their independence may be ensured, the said inspectors shall have no interest whatsoever in the enterprises under their supervision.

Section 106: (1) The Labour Inspectors shall swear to carry out their duties well and faithfully and not to reveal, even after leaving the service, any manufacturing secrets or other processes with which they may have become acquainted in the course of their duties.

(2) The oath shall be taken once only before the court of appeal of the area of their first posting.

(3) Every violation of the oath shall be subject to penalties.

(4) The Labour Inspectors shall treat as absolutely confidential the source of any complaint bringing to their notice a defect in the

installation or a breach of legal and statutory provisions and shall give no intimation to the employer or his representative that a particular inspection was made in consequence of complaint.

Section 107: (1) Labour Inspectors who are heads of Inspectorates shall have the initiative with respect to their tours of inspection and inquiries within the frame work of the labour legislation and regulation in force.

(2) They shall have permanently at their disposal the human and material resources necessary for the performance of their duties.

Section 108: (1) Labour Inspectors with the proper credential shall be empowered:

To enter any establishment liable to inspection, freely and without warning at any time of the day or night, for the purpose of inspection.

To enter for the purpose of inspection any infirmary of an establishment or any canteen, sanitary installation or any facility supplying workers with water.

To carry out any examination, control or inquiry which they consider necessary to ascertain that the laws and regulations in force are strictly complied with and, in particular:

To interrogate, alone or in the presence of witnesses, the employer or the staff of the enterprise on any matters concerning the application of the laws and regulations in force;

To ask any books, registers and documents, the keeping of which is prescribed by laws or regulations relating to conditions of employment, in regulations in force and to copy such documents or make extracts from them;

To enforce the posting of notices where this is required by the laws and regulations in force;

To take and carry away for purposes of analysis samples of material and substances used or handled, subject to the employer or his representative being notified of any samples taken and carried away for such purpose.

(2) Labour Inspectors shall notify the employer or his representative of any inspection visit unless they consider that such notification may be prejudicial to the effectiveness of the inspection.

Section 109 (1) Labour Inspectors may record in official reports having the force of prima facie evidence, any infringement of labour laws and regulations.

They shall be empowered to take direct legal action before the competent court against any person infringing the provisions of this law and its implementation instruments;

(2) The terms and conditions under which Labour Inspectors shall exercise their powers of control shall, as when necessary, be laid down by regulations.

Section 110: (1) In military establishments employing civilian labour, the powers and responsibilities of Inspectors concerning the monitoring of the application of labour laws and regulations may be conferred upon officials or officers specially appointed for that purpose whenever the interest of national defence preclude the admittance of personnel not belonging to the establishments concerned.

(2) Such appointments shall be made by the President of the Republic on the joint proposal of the Minister in charge of Defence and the Minister in charge of labour.

(3) In any case, persons exercising such monitoring functions shall immediately inform the local Labour Inspector of any action taken by them.

Section 111: For the execution of the duties entrusted to the labour Medical Inspectorate, the medical inspectors of labour shall have the same obligations, rights and prerogatives as those conferred on Labour Inspectors by Section 106, 107 and 109 of the law.

II – Placement

Section 112: (1) placements shall come under the jurisdiction of the Minister in charge of Labour.

(2) Placement operations shall be carried out free of charge for workers either by:

Government services or bodies;

Offices or agencies opened by trade unions, employer's associations or private bodies.

(3) The opening of the offices or agencies referred to in Subsection 2(b) above shall be subject to the prior approval of the Minister in charge of Labour.

(4) A decree issued after consultation with the National Labour Advisory Board shall determine the conditions for the implementation of this section.

Section 113: In order to ensure full employment of the National labour force decrees issued after consultation with the National Labour Advisory Board shall limit the employment of workers of foreign nationality in certain occupations or at certain levels of professional qualifications.

Chapter II: Measures Of Control

Section 114: (1) Every person who opens or reopens an enterprise or establishment of any kind shall submit a declaration thereof to the labour inspectorate. The same rule shall apply in case of change or discontinuance of business or transfer.

(2) An order of the Minister in charge of Labour issued after consultation with the National Labour Advisory Board shall lay down the conditions under which such declarations shall be made.

Section 115: Every employer, whether public or private and irrespective of the nature of his activity, shall furnish the local labour inspectorate and the services in charge of employment with detailed information concerning the situation of the manpower employed by him. Such information shall be in the form of declaration, the frequency and conditions of submission of which shall be determined

by order of the Minister in charge of Labour issued after consultation with the National Labour Advisory Board.

Section 116: (1_ The employer shall maintain at the workplace and keep constantly up to date a register called the <<employer's register>> which shall record such information as will enable the labour and social insurance services to exercise control over the Minister in charge of Labour.

(2) The said order shall also prescribe the conditions under which certain enterprises or categories of enterprises may be exempted from keeping an employer's register.

Title VIII

Professional Institutions

Chapter I: The National Labour Advisory Board

Section 117: (1) A National Labour Advisory Board, hereinafter referred to as the <<Board>>, shall be established under the Minister in charge of Labour.

(2) Its functions shall be:

a) To examine matters relating to working conditions, employment, vocational guidance and training, placement, manpower movements, migration, improvement of the material conditions of workers, social insurance, trade unions and employers' associations.

b) to make recommendations and proposals relating to laws and regulations to be made in the above areas, where such recommendations are provided for by this law.

Section 118: (1) There shall be established within the National Labour Advisory Board a Standing Committee to which the Board may delegate powers to make any recommendations and proposals and examine and study all matters falling within its province.

(2) Ad-hoc Committees may, as and when necessary, be formed within the Board.

Section 119: The National labour Advisory Board shall be presided over by the Minister in charge of Labour or his representative. It shall comprise:

One substantive member and one alternate member representing the National Assembly;

One substantive member and one alternate member representing the Economic and Social Council;

One substantive member and one alternate member representing the Supreme Court:

An equal number of substantive and alternate member representatives of workers and employers appointed by an order of the Minister in charge of Labour on the proposal of the most representative workers' and employers' organizations;

(2) The organization and functioning of the National Labour Advisory Board as well as of Standing and Ad-hoc Committee shall be determined by regulations.

Chapter II: The National Commission on Industrial Health and Safety

Section 120: (1) A National Committee on Industrial Health and Safety shall be set up under the Ministry in charge of Labour.

(2) It shall be charged with the study of problems related to industrial medicine and the hygiene and safety of workers. In this capacity, it shall be responsible for:

Making suggestions and recommendations concerning laws and regulations to be made in the above fields;

Making recommendations for the benefit of employers and workers, insurance bodies and various Ministries concerning the protection of the health of workers;

Making proposal concerning the approval of dangerous machinery and manufacturing processes likely to endanger the health of workers;

Carrying out or participating in any work of a scientific nature falling within its sphere of activity.

Section 121: (1) The National Commission on Industrial Health and Safety shall be presided over by the Minister in charge of Labour or his representative. It shall comprise technicians or experts of unquestionable competence in the fields of industrial medicine and industrial hygiene and safety. Representatives of workers and employers shall be represented in equal number within the National Commission.

(2) The National Commission may seek the assistance of experts whenever it deems this necessary.

(3) The organization and functioning of National Commission shall be determined by regulations.

Chapter III: Staff Representatives

Section 122: (1) Staff representatives shall be elected in any establishment located within national territory, employing, on a regular basis, more than twenty workers governed by this law, irrespective of the nature of the establishment or of the employer, be the public private, lay or religious, civilian or military.

(2) Where the head of the establishment has the status of worker he shall be part of the labour force to be considered for election.

(3) Staff representatives shall be elected for a two-year term of office. They shall be eligible for re-election.

Section 123: (1) With the exception of the head of the establishment, workers of either sex who are eighteen years old and

worked for not less than six months in the enterprise shall qualify as electors.

(2) Electors, who are aged twenty years, can express themselves in English or French and have worked continuously in the enterprise for not less than twelve months shall be eligible for election.

(3) The head of the establishment, his spouse, ascendants as well as his relatives of the same degree shall not be eligible for election.

Section 124: (1) Save in exceptional circumstances or unless otherwise provided for by an agreement, the head of an establishment shall be bound to allow staff representatives a period of time of not more than 15 (fifteen) hours per month to perform their duties.

Such time shall be considered and paid for as working time. It shall be used only for the performance of duties that pertain to the office of staff representative such as are defined by the laws and regulations in force.

(2) Where the time is not used, it may neither be carried forward to the following month nor be paid for.

Section 125: An order of the Minister in charge of Labour issued after consultation with the National Labour Advisory Board shall determine:

The number of staff representatives to be elected and their division in to electoral colleges;

The procedure of election which shall be by secret ballot;

The form of the report on the election which the employer shall be bound to submit to the Labour Inspector of the area

The conditions under which the staff representatives shall be received by their employer or his representative as well as the facilities to be made available to them;

The conditions whereby a staff representative may be removed by the electoral college that elected him.

Section 126: (1) Objections regarding electors, eligibility of staff representatives or the regularity of elections shall be dealt with by the

Court of First Instance of the area which shall give a ruling without delay.

(2) To be admissible, an objection must be lodged within the 3 (three) days following publication of the electoral lists if it relates to electors or to eligibility, or within 15 (fifteen) days following the announcement of the results of the election if it relates to the regularity thereof.

Section 127: Each staff representative shall have a substitute elected in like manner who shall replace him when he is absent for any valid reason, or in the event of his death, resignation, removal, change of occupation category resulting in a change of electoral college, termination of contract of employment or loss of the qualifications for eligibility.

Section 128: The functions of the staff representatives shall be:

To refer to the employers any individual or collective demand in respect of conditions of employment, worker's protection, the application of collective agreements, classification of occupations and wage rates which have not been directly acceded to;

To refer to the Labour Inspectorate any complaint or claim in respect of the application of the laws and regulations which the said Inspectorate is responsible for enforcing;

To ensure that the rules relating to the hygiene and safety of workers and to social insurance are observed, and to recommend any necessary action in these matters;

To submit to the employer any useful suggestions for improving the organization and output of the enterprise

Section 129: Notwithstanding the above provisions, the workers shall be entitled to submit their grievances and suggestions personally to the employer.

Section 130: (1) An employer or his representative proposing to terminate the appointment of a staff representative, whether permanent or substitute, shall be bound to seek and obtain the prior authorization of the local labour Inspector.

(2) The Labour Inspector shall, after hearing both parties ensure that the proposed termination is not motivated by acts carried out by the staff representative while performing his duties.

(3) Any dismissal made in violation of the foregoing provisions shall be null and void.

(4) However, in cases of serious misconduct, the employer may temporarily suspend the staff representative, pending the decision of the Labour Inspector. If the authorization is not granted, the staff representative shall be reinstalled with full pay for the period of suspension

(5) The labour Inspector shall make his decision known within a time limit of 1 (one) month, after which the authorization shall be taken for granted unless the Labour Inspector has notified the employer that an additional month is necessary for him to complete his enquiry.

(6) The above provisions shall apply to:

Staff representatives who have been proposed for transfer elsewhere, thus making it impossible for them to perform their duties in their original establishment, unless the people concerned have given their consent before the local Labour Inspector:

Former staff representatives for a period of 6 (six) months following the expiry of their term of office;

Candidates for the office of staff representative for a period of 6 (six) months following the date of filling of nomination papers

(7) Notwithstanding the authorization of the Labour Inspector to dismiss a staff representative, such staff representative reserves the right to bring the matter before the competent court in accordance with the procedure laid down in Section 139 of this law.

Title IX

Labour Disputes

Chapter I: Individual Disputes

Section 131: Any individual dispute arising from a contract of employment between workers and their employers or from a contract of apprenticeship shall fall within the jurisdiction of the court dealing with labour disputes in accordance with the legislation on judicial organisation

Section 132: The competent court shall, in principle, be that of that place of employment: provided that a worker who no longer resides at the place where he is performing a contract of employment or before that of his place of residence, on the condition that both courts are situated in Cameroon.

I – Composition of Courts

Section 133: (1) The court dealing with labour dispute shall be composed of:

A president who shall be judicial officer;

An employer assessor and a worker assessor chosen from the lists drawn up in accordance with Section 134 below;

(2) The president shall designate the assessors who are to sit for each case.

(3) Where one or both of the assessors duly summoned to attend fail to do so, the president shall summon them again. In the event where one or both of the assessors still fail to attend, the president shall sit alone

(4) In the case referred to in the foregoing subsection, the judgement shall make mention of the duly justified absence of one or both of the assessors.

(5) Except in a case force majeure, any assessor who is absent three times during his term of office shall be relieved of his duties.

Another assessor designated from the list drawn up for the sector of activity concerned shall replace him for the remaining period of his term of office.

Section 134: (1) The assessors shall be appointed by order of the Minister of Justice on the proposal of the Minister in charge of Labour. They shall be chosen from lists containing not less than three names for each post to be filled submitted by the most representative trade unions or employers' associations. If these fail to act or if there are no such organizations, the Minister in charge of labour shall directly make his proposal.

(2) The assessors shall be appointed for a term of two judicial year and may be re-appointed, provided that the assessors in office shall continue to act until the new appointments have been made.

(3) If necessary, the list of assessors may be completed during the judicial year in the same manner as that prescribed in Subsection 1. The term of office of the assessor so designated shall expire at the same time as that of the assessors appointed on the basis of the biennial lists.

Section 135: (1) The conditions required for appointment as an assessor shall be those required of the leaders or management of a trade union or employers' association as set out in Section 10 of this law, including the following additional conditions:

An assessor must have performed such duties in the area of jurisdiction of court for at least 3 (three) months; and

He must have sufficient knowledge of either English or French.

(2) An assessor who is convicted of any of the offences defined in Section 10 of this law, or who is deprived of his civic rights, shall automatically forfeit his office as assessor.

Section 136: (1) Assessors shall take the following oath before the court in which they are to serve.

<< I swear to discharge my duties with zeal and integrity and to keep the secrecy of the proceedings>>.

Section 137: (1) The functions of assessors shall be civic and social duty. They shall be performed free of charge.

The amount of and conditions of granting such allowances shall be determined by joint order of the Minister of Justice and Minister in charge of Labour.

II – Procedure

Section 138: (1) The proceedings for the settlement individual disputes relating to employment, both in first instance and on appeal, shall be free of charge.

(2) Any decisions and documents produced shall be registered duty-free and all procedural cost in criminal proceedings shall be treated on the footing as cost in criminal proceedings in respect of their payment, charging settlement and collection.

Section 139: (1) Any worker or employer shall request the competent Labour Inspector to settle the dispute out to court.

(2) Rules relating to summonses and appearance before the court shall be determined by order following the recommendation of the National Labour Advisory Board.

(3) In the case of an amicable settlement, the terms thereof shall be embodied in a statement of conciliation made out by the Labour Inspector and signed by him and by the parties. Such settlement of the dispute shall be applicable when the statement of conciliation has been endorsed by the president of the competent court and marked for enforcement.

(4) In cases of partial conciliation, the statement on non-conciliation shall mention the points on which agreement has been reached and those on which disagreement persists.

(5) If the attempt at conciliation fails, the inspector of labour and social insurance of his representative shall make out a statement of non-conciliation.

(6) In all cases referred to above, a copy of the statement signed by the Labour Inspector and by the parties shall be addressed to the president of the competent court, and handed to the parties.

Section 140: (1) In cases of total or partial failure of the attempt at conciliation to which reference is made in the preceding section, the action shall be instituted by an oral or written declaration made to the registrar of the competent court by the most diligent party.

In order to be receivable, the said declaration shall be accompanied by a copy of the statement of non-conciliation or of partial conciliation.

The said declaration shall be entered in a register kept especially for the purpose, and certificate of the entry shall be delivered to the party instituting the action.

Section 141: (1) Within two days (not including Sundays and holidays) of receipt of the petition, the president shall summon the parties to appear within twelve days (to which travelling time shall be added in appropriate cases).

(2) The summons shall state the name and occupation of the plaintiff, the subject matter of the petition, and the place, date and hour for appearance.

(3) The summons shall be served on the person or delivered at his home in accordance with the provisions for ordinary law. Service may be validly affected by registered letter with acknowledgement of receipt.

Section 142: (1) The parties shall appear before the court at the appointed place, date and hour. They may be accompanied or represented as in the case of proceedings before an ordinary court of law either by a worker or an employer engaged in the same branch of activity or representative of the trade union or employers' association to which the party belongs; moreover, an employer may be represented by a manager or employee of the undertaking or establishment.

(2) Save in the case of counsel, any such authorized representative shall be appointed by a written document.

Section 143: (1) If the plaintiff fails to appear on the day fixed for the hearing and fails to show a cause of force majeure, the case

shall be struck off the rolls. It may be resumed once only, with the same formalities as for the initial petition otherwise it shall be void. If, after an adjournment, he fails to appear, the same shall apply.

(2) If the defendant does not appear or is not properly represented, the court shall, after examining the case, pronounce a default judgment.

(3) If the defendant does not appear but has presented his defence in a written memorandum, the case shall be decided by a judgment which shall be deemed to have been given after a hearing of both parties.

(4) Any defendant who has appeared in the proceedings shall not thereafter be found to be in default. Any judgment given against him shall be deemed to have been given after a hearing of both parties.

(5) Whatever the case, the judgment shall be notified in accordance with the rules prescribed in Section 151 hereunder so that the period allowed for lodging and appeal may begin to run.

Section 144: (1) An objection may be made concerning an assessor of the court:

If he has a personal interest in the matter in dispute;

If he is related by blood or married up to the sixth degree, to one of the parties;

If there have been penal or civil proceedings between the assessor and one of the parties or the spouse or relative by married in the direction line of one of the parties.

If the assessor has expressed an opinion in writing or orally on the matter in dispute; and If the assessor is the employer or employee of one of the parties to the case.

(2) The objection shall be made before any oral proceedings commence. The president shall give a ruling immediately. If the objection is overruled, the oral proceedings shall, begin if the objection is upheld, the case shall be adjourned to the next hearing.

Section 145: (1) The court shall proceed immediately with the examination of the case. If the parties so agree or if the president so decides, the case may be adjourned for not more than fifteen days.

The court may also order giving reasons, an inquiry, an inspection of premises or other procedure for procuring information.

(2) On the termination of the proceedings, the court may immediately deliberate in private. Unless there is a postponement for further deliberation, which shall be limited to a maximum of eight days; the judgment shall be handed down immediately and shall contain reasons.

(3) The record of the judgment shall be signed by the president and the registrar.

Section 146: The judgment may provisionally order immediate execution, notwithstanding any motion for a stay of execution or any appeal, with exemption from surety up to a sum to be fixed by a statutory instrument. In respect of amounts in excess, provisional execution may be ordered on condition that surety is furnished, but it may be ordered without such condition, and in any amount, notwithstanding a motion for stay or an appeal, in the case of wages and perquisites recognized as due and not in dispute.

Section 147: All orders and judgments and all official copies of contracts and any other documents in respect of which execution may be ordered shall be marked with executory formula and headed as follows:

<<REPUBLIC OF CAMER0ON>>

<<IN THE NAME OF THE PEOPLE OF CAMEROON>>

and shall close with the following words:

<<Therefore the President of the Republic of Cameroon commands and orders all bailiffs and process-servers by these presents to give effect to this order (judgment, etc.) and all procurers general, State counsels and all members of the Judicial and Legal Service and civil servants charged with taking action on behalf of the Republic to lend their aid when so required by law>>.

<< In faith whereof the present order (or judgment etc.) has been signed by the president and the registrar>>

Section 148: Order and judgments shall be executed, if the parties so request, by bailiffs and process-servers.

Section 149: A worker shall be entitled as of right to the assistance of the court in the execution of a judgment or order in his favour. The president shall designate a bailiff who shall assist the worker in this regard.

Section 150: A third party claiming to be the owner of all or part of the property distrained may, before the sale, submit his claim to the president of the court either orally or in writing. Where the evidence produced and the arguments put forward so warrant, the president shall suspend the sale of the articles and effects claimed and shall then summon the parties within eight days. After hearing the parties, the president shall make an order for or against the appropriation of the property distrained.

Section 151: (1) In the case of judgment by default, service on the faulting party shall be effected by the registrar of the court without charge, in the manner prescribed in Section 141 above.

(2) If within ten days of service (plus time allowed for distance) the defaulting party has not moved for a stay of execution in the manner prescribed in Section 140 above the judgment shall become enforceable. On a motion for a stay of execution the court shall summon the parties again in the manner prescribed in Section 141; the new judgment shall be enforceable notwithstanding default.

Section 152: Except with regard to the labour jurisdiction of the court, the judgments of courts in matter shall be final and without appeal if they relate to applications for delivery of certificates of employment or pay slips.

Section 153: The courts passing judgment on labour matters shall deal with all counter-claims or applications for set-off which by their nature fall within their jurisdiction.

Section 154: (1) Within 15 (fifteen) days of the handing down of the judgment in the case of a full hearing or its notification in the case of judgement by default or deemed to have had full hearing, an appeal may be lodged in the manner prescribed in Section 140 above.

(2) The appeal shall be transmitted, within eight days of the declaration of the intention to appeal, to the registrar of the competent court of appeal together with a copy of the judgment and any letter, memoranda and other documents submitted by the parties.

(3) The appeal shall be determined within two months of the said declaration of intention to appeal on the basis of the documents produced, provided that the parties may be heard at their request, in which case they may be represented in accordance with the rules laid down in Section 142 above. The parties shall be informed by the registrar, at the address given by the parties, of the date of the hearing, the name of the respondent and judgment being appealed.

(4) The court shall give a ruling on the character of the appeal. In the case of an improper or dilatory appeal, the appellant may be sentenced to a fine of not less than 20, 00 and not more than 100,000 francs.

(5) The court shall designate a bailiff at whose instance the execution be carried out.

Section 155: (1) A court may, in the interest of justice and at the request of one of the parties, extend the time-limit provided for in this section for reasons which shall be stipulated in the judgment.

(2) No extension pursuant to the provisions of the present section shall exceed thirty days.

Section 156: (1) In all procedural matters not covered by this chapter ordinary law provisions shall be applicable only in the absence of specific provisions laid in this law.

(2) The conditions of implementation of this chapter, in particular, as concerns the form of registers shall be laid down by statutory instruments.

Chapter II: Collective Disputes

Section 157: (1) Any dispute which is characterized by:

The intervention of a group of wage-earning workers, whether or not the said workers are organized in trade unions, and

The collective nature of the interests at stake shall be deemed to be a collective labour dispute and shall therefore lie outside the jurisdiction of the courts to which reference is made in Section 131 above.

Settlement of any collective labour dispute shall be subject to conciliation and arbitration procedures as provided for in Section 158 and 164 hereunder.

Shall be deemed legitimate any strike or lock-out started after these arbitration procedures have been exhausted and have failed.

A strike shall be complying with the normal labour rules, in order to bring the employer to meet their demands or claims.

A lock-out shall be the locking of an establishment by the employer in order to bring pressure to bear on workers on strike or threatening to go on strike.

I – Conciliation

Section 158: (1) The competent Inspector of Labour and Social Insurance shall be immediately notified by the most diligent party of any collective dispute

Where the collective agreement does not provide for a conciliation procedure or in case of failure of such procedure, the competent Inspector of Labour and Social Insurance shall immediately convene the parties and attempt to bring about an amicable settlement.

Either of the parties may empower a representative to take part in the conciliation proceedings on its behalf. If a party does not appear and has not duly appointed a representative, the Inspector of Labour and Social Insurance shall make a report to that effect, and the defaulting party may, on the basis of the said report, be sentenced to fine of not less than 50,000 and not more than 500,000 francs.

The Inspector of Labour and Social Insurance shall convene the parties to meet again not more than forty-eight hours thereafter.

Section 159: (1) At the end of the attempt at conciliation, the Inspector of Labour and Social Insurance shall make a report stating either the agreement or the partial or total disagreement of the parties. The latter shall sign the statement and shall each receive a copy thereof. Any agreement by conciliation shall be enforceable as laid down in Section 139.

Section 160: If the attempt at conciliation fails, the Inspector of Labour and Social Insurance shall be bound to refer the dispute to the arbitration procedure defined hereinafter, within the following eight clear days.

II – Arbitration

Section 161: (1) The arbitration of any collective labour dispute which has not been settled by conciliation shall be undertaken by an arbitration board established in the area of each appeal court and composed as follows:

Chairman:

A judicial officer of the competent court of appeal

Members:

An employer assessor;

A worker assessor

The two assessors shall be designated by the chairman of the arbitration board from among assessors appointed to the high court for the area.

A registrar of the court of appeal shall act as secretary.

Section 162: (1) The arbitration board shall not make an award on any matter except those set down in the statement of non-conciliation and those which have arisen out of events subsequent to the making of the said statement and are a direct consequence of the dispute.

The board shall give its award in law in disputes regarding the interpretation and application of laws, regulations, collective agreements and company agreements currently in force.

It shall give award in equity in other disputes, particularly those relating to wages or to conditions of employment if the latter are not determined by legislative provisions, regulations, collective agreements or company agreements currently in force, and in disputes relating to the negotiation or revision of clauses or collective agreements.

The arbitration board shall have the widest powers to obtain information on the economic situation of the undertakings and on the situation of the workers concerned in the dispute.

It may make any necessary investigations of undertakings and trade unions and employers' association and it may require the parties to produce any document or to provide any information, whether economic, accounting, financial, statistical or administrative, which may be useful to it in the performance of its duties.

Section 163: (1) An arbitration award shall be notified to the parties without delay by the competent inspector of labour and social insurance

If at the expiration of a period of eight clear days after notification, neither party has applied for a stay of execution, the award shall become effective in accordance with the provisions of Section 164 hereunder. The same shall apply if an application for stay, having been made, is withdrawn before the expiration of the paid period.

An application for stay of execution shall be valid if it is made by registered letter, with acknowledgement of receipt, sent to the Inspector of Labour and Social Insurance of the area.

Section 164: (1) The putting in to effect of a conciliation agreement or of an arbitration award in respect of which no stay of execution has been allowed does not specify a date in this regard, it shall have effect as from the date of the attempt at conciliation;

A trade union or employers' association duly established in conformity with this law may institute any proceedings arising out of a conciliation agreement or arbitration award in respect of which no application has been made for a stay of execution.

Conciliation agreement and arbitration awards shall be immediately posted up in the offices of the Inspectorate of Labour and Social Insurance and published in the *Official Gazette*.

The minutes of agreements and awards shall be deposited at the registry of the high court of the place of dispute.

The conciliation and arbitration procedures shall be free of charge.

Section 165: (1) A lock-out or strike undertaken in contravention of the above provisions may have the following consequences:

In case of lock-out, the employer may:

Be required to pay workers' wages for the days so lost;

Be declared, for a period of not less than two years, ineligible for membership of a chamber of commerce and be prohibited any way whatsoever in any works enterprise or in any supplies contract involving the state or a local council. Such ineligibility shall be pronounced by an ordinary law court on the application of the Minister in charge of Labour and Social Insurance.

In case of strike, the workers may:

See their contracts terminated on grounds of serious misconducts;

Be punished with fine from 20,000 to 100,000 CFA francs.

Title X

Penalties

Section 166: Any person responsible for the administration or management of a trade union and any person committing and infringement of the provisions of Section 3, 6, 10, 16 and 19 shall be punished with fine of from 50,000 to 500,000 francs.

Section 167: (1) Any person committing an infringement of Section 29,30,(1), 40, 41, 44, 50 (1), 51, 62, 64, 86, 87 (2), 88, 89, 90, 92, 93, 97, 98 (1), 99, 100, 101, 112 (2) and (3), 114 (1), 115 and 116;

Any person making false statement concerning the rules of a trade union or an employers' association or the names and offices of the persons responsible for the administration or management of such trade union or association;

Any person falsely claiming to be responsible for the administration or management of a trade union;

Any person committing an infringement of the decree provided for in Section 62 (1); and

Any person committing an infringement of the provisions of collective agreements which have been the subject of a decree of extension, in matters of wages, bonuses, allowances or any other benefits in cash, shall be punished with fine of from 100,000 to 1,000,000 francs.

Section 168: (1) Any person committing an infringement of Section 26, 27 (2) 67,68, 75 (1), 82 and 84 (1), (2), (3) and (4);

Any person who commits, against a worker belonging to a trade union, an act of discrimination tending to affect freedom of association as regards employment;

Any person who engages in any of the practices referred to in Section 4 (2);

Any person interfering with the proper performance of the duties of staff representatives;

Any person who forces a worker, to take up employment against his will or who prevents a worker from taking up employment, going to work or discharging, in a general manner, any obligations imposed by his contract;

Any person who, by using a fictitious contract or one which contains untrue statements, obtains employment or intentionally takes the place of another worker, and

Any employer, employers' agent or official in charge who knowingly enters in the employer's register or other document false statements concerning the duration of a worker's employment or the character of his work, and any worker who knowingly makes use of such false statements; and

Any person who demands or accepts from a worker any remuneration whatsoever for acting as an intermediary in the settlement or payment of wages, allowances or cost of any kind, or for obtaining an employment or for settling an individual dispute respecting employment whatever the matter at issue, shall be punished with fine of from 200,000 to 1,500,000 francs.

Section 169: (1) Any person who obstructs the performance of the duties or the exercise of the powers of the Inspectors of Labour and Social Insurance shall be punished with a fine of from 1,000,000 francs to 2,000,000 francs.

Section 170: (1) In case of repetition of infringement of the provisions of Section 26, 27 (2) 30 (1), 67, 68, 75 (1), 82, 84 (2), (3) and (4), 86, 88, 89, 90, 92, 93, 98 (1) as well as of the provisions of sections 167 (3), 168 (2), (3), (4), (5), (6), (7) and (8) and 169, a penalty of imprisonment of from 6 days to 6 months may also be required.

Where the person concerned is a second offender or whenever the person committing the infringements referred to in Section 168 (8) is one of the persons responsible for the administration and management of a trade union or belongs to the Ministry of Labour and Social Insurance, the penalty of imprisonment shall be mandatory.

Section 171: The provisions of the Penal Code shall apply to
Persons guilty of acts or resistance, abuse and force against
Inspectors of Labour and Social Insurance;

Persons committing infringements of the provisions of Section 2
(3); and

Persons impersonating Inspectors of Labour and Social
Insurance and medical Inspectors of Labour and Social Insurance

Section 172: The fines provided in Section 167, 168, 169 and 170
in respect of infringements of the provisions of Section 29, 40, 62,
64, 67, 68, 82, 86, 87, 88, 97 and 100 above shall multiplied by the
number of workers affected by the punishable offence.

Section 173: The head of an enterprise shall bear civil liability for
the conviction of this agent or official in charge.

Title XI

Special Transitional and Final Provisions

Section 174: In matters where no special provisions have been
stipulated, enterprises benefiting from the Industrial Free Zone
regime shall be bound to apply the provisions of this law and its
implementation instruments.

Section 174: Vocational training, vocational rehabilitation and
employment of handicapped persons shall be governed by laws.

Section 176: (1) All previous provisions repugnant to this law are
repealed, in particular Law N° 74/14 of 27 November 1974 to
institute the Cameroon Labour Code and law N° 68/LF/20 of 18
November 1968 prescribing the form in which trade unions
employers' associations must be set up in order to qualify for
registration.

Regulations drawn up pursuant to aforementioned law No 74 – 14 of 27th November, 1974, or those applicable to the said law but not repugnant to this law shall remain in force until repealed or replaced.

Section 177: This law shall be registered, published according to the procedure of urgency and inserted in the **Official Gazette** in English and French.

"The author treats with unquestionable lucidity the procedure for commencing and managing Labour matters in Cameroon.... This book stands out as a big contribution to knowledge and I would quickly recommend it to legal Practitioners, Judges, Law Students, Law makers and Social Workers."

Ephraim N. Ngwafor, Professor of Law, University of Yaoundé II, SOA, Cameroon

"The core of the work is based on principles derived from the labour code and indigenous case law expounding on the concepts in the code. It critically attempts to demonstrate the judicial attitude of the Cameroonian judge to the code. He shows that at the apex of the judicial ladder is the Supreme Court of Cameroon that gives uniform interpretation and common application of the labour code of Anglo-Saxon and Romano-Germanic origins. Case law has been carefully analysed and comparison with foreign law drawn where it was considered necessary to do so. In writing this book, the author has endeavoured to raise awareness about issues of security of service (right of specific reinstatement) in Cameroon which has not received the attention it deserved particularly from our judges and lawyers. On the whole, this book is a very insightful piece of scientific work that I recommend to all law students, law professors, lawyers, and judges, and all those interested in labour law."

Fonkwe Joseph Fongang, Supreme Court Judge, Republic of Cameroon

There is a dearth of well researched books on important disciplines in law written by Cameroonians. This regrettable situation has invariably meant a reliance of substantive and practice books written mostly by Nigerian and English writers. While books written by these writers have been helpful, they have not always captured the peculiarities and judicial attitudes of the Cameroonian context. When approached from the perspective of practice in the Anglophone regions, not even Cameroonian writers of French orientation have done justice to this situation. This book contributes to filling this gap. It is a comprehensive review that combines an analysis of the principles and basic procedure of labour law in Cameroon. Yanou draws on solid academic research as well as a wide ranging experience in legal practice across Cameroon and Nigeria to present a coherent and practical elaboration of themes such as employment, dismissal, remedies for wrongful dismissal, compensation for industrial injuries, and trade unions. The book is also motivated by the desire for a repository for members of the Bar and Bench, judges, academics, students and human resources practitioners.

DR MICHAEL AKOMAYE YANOU holds a PhD in Law from Rhodes University, Grahamstown, South Africa. He is Associate Professor of law at the Department of Law, University of Buea, Cameroon, and a practicing advocate who has been called to the Bars of Cameroon and Nigeria.



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